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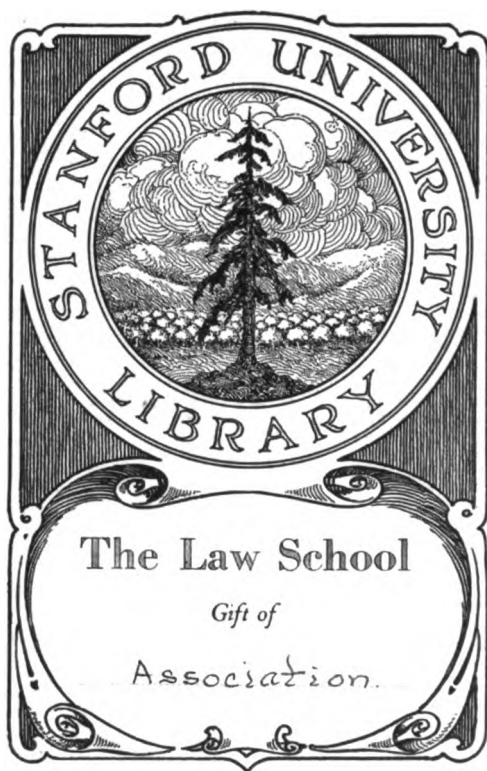
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**REPORT**  
**OF THE**  
**PROCEEDINGS OF THE MEETINGS**  
**OF THE**  
**State Bar Association**  
**OF WISCONSIN**

**FOR THE YEARS**  
**1916, 1917 and 1918**

STANDARD BOOK EXCHANGE

**MILWAUKEE, WIS.**  
**THE EVENING WISCONSIN PRINTING CO.**  
**—1917—**

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# ANNUAL MEETING of THE STATE BAR ASSOCIATION OF WISCONSIN.

HELD AT OSHKOSH, WISCONSIN, JUNE 28, 29, 30, 1916.

Session Wednesday, June 28th, 1916.

Meeting called to order at 2:00 P. M. by President, George B. Hudnall.

**PRESIDENT HUDNALL:** As president of the Bar Association it becomes my pleasure as well as my duty to deliver what the by-laws term an Opening Address, but I assure you this is hardly an opening address.

Address read. (See Appendix, p. 77.)

**PRESIDENT HUDNALL:** I have been requested to announce by the Winnebago County Bar Association, that the number they can accommodate at the banquet to-morrow night is limited to about 180, and they desire all those who intend to attend that banquet to purchase tickets as soon as possible.

(Here followed discussion by Solon L. Perrin, President Hudnall, F. R. Bentley, C. B. Bird and John B. Sanborn, as to which committee should be referred the recommendations contained in President Hudnall's address.)

**MR. BIRD:** I move that our executive committee be requested to recommend to this Association later in the session, such action with reference to the President's Address as may be proper for this Association to take.

**MR. SANBORN:** I second the motion.

Motion carried unanimously.

**THE PRESIDENT:** The motion prevails, and the report is referred to the Executive Committee.

The next order of business is the report of the Committee on Membership.

**MR. B. L. PARKER,** of Green Bay, Chairman of the Committee, reported as follows:

To the Wisconsin State Bar Association:

Your Committee on Membership hereby reports that during the past year it has received and approved, as of the dates indicated on the applications respectively, the following applications for membership:

## HONORARY MEMBERS.

Evan A. Evans, Baraboo.  
 A. J. Vinje, Madison.  
 Michael Kirwan, Manitowoc.  
 Edward C. Higbee, La Crosse.

G. N. Risjord, Ashland.  
 George Thompson, Ellsworth.  
 James Wickham, Eau Claire.  
 Ellsworth Burnett Belden, Racine.

## ACTIVE MEMBERS.

Charles H. Gilman, Friendship.  
 H. I. Weed, Oshkosh.  
 Wm. C. Kimball, Oshkosh.  
 D. E. McDonald, Oshkosh.  
 A. J. Barber, Oshkosh.  
 R. L. Clark, Oshkosh.  
 Edward M. Hooper, Oshkosh.  
 Wm. J. Foulkes, Oshkosh.  
 D. C. Pinkerton, Oshkosh.  
 Chas. H. Williams, Oshkosh.  
 Arthur H. Goss, Oshkosh.  
 Frederick J. Eaton, Oshkosh.  
 Edward J. Dempsey, Oshkosh.  
 Frank B. Keefe, Oshkosh.  
 W. H. Armington, Oshkosh.  
 Chas. H. Forward, Oshkosh.  
 E. L. Finch, Oshkosh.  
 Arthur A. McLeod, Madison.  
 J. C. Bossard, Clintonville.  
 W. C. Bouck, Oshkosh.  
 Fred A. Foster, Fond du Lac.  
 Leo A. Williams, Fond du Lac.  
 T. L. Doyle, Fond du Lac.  
 Carl V. Naffz, Merrill.  
 Frank B. Lamoreaux, Ashland.  
 Stanley D. Tallman, Janesville.  
 Walter Drew, Madison.  
 Frank L. McNamara, Milwaukee.  
 John Cudahy, Milwaukee.  
 John J. Okoneski, Wausau.  
 J. R. Pfiffner, Stevens Point.  
 Mrs. Belle Quinlan, Benton.  
 Charles E. Pierce, Janesville.  
 James H. Davidson, Oshkosh.  
 Emil C. Pors, Marshfield.  
 Edward Morrissey, Delavan.  
 Peter Fisher, Jr., Kenosha.  
 Aug. C. Moeller, Milwaukee.  
 John W. Burkhardt, Milwaukee.  
 Arthur H. Shoemaker, Eau Claire.

Emmet R. Hicks, Oshkosh.  
 Charles Oellerich, Oshkosh.  
 Francis C. Grant, Janesville.  
 Joseph T. Gallagher, Stevens Point.  
 Otto A. Bossuener, Sheboygan.  
 Samuel Bernard Schein, Madison.  
 Louis C. Gunderson, Madison.  
 James E. Tully, Kenosha.  
 Simon Gillen, Sheboygan.  
 William P. Crawford, Superior.  
 Timothy M. Bowler, Sheboygan.  
 George B. Nelson, Stevens Point.  
 Gilson G. Glasier, Madison.  
 Wheeler P. Bloodgood, Milwaukee.  
 Frederick A. Teall, Milwaukee.  
 John G. Hardgrove, Milwaukee.  
 A. W. Richter, Milwaukee.  
 Henry J. Bendinger, Milwaukee.  
 Eugene L. McIntyre, Milwaukee.  
 Charles E. Brady, Manitowoc.  
 LeRoy D. Butler, Madison.  
 Gustav B. Husting, Mayville.  
 John F. Riordan, Haywood.  
 Carl N. Hill, Madison.  
 Charles W. Newberry, Waukesha.  
 Wyatt P. Angelo, Stevens Point.  
 H. V. Gard, Superior.  
 O. B. Rhyner, Oshkosh.  
 Eugene A. Clifford, Juneau.  
 Arnold Wangerin, Milwaukee.  
 Frank Tilden Boesel, Milwaukee.  
 Raymond J. Cannon, Milwaukee.  
 H. J. Killilea, Milwaukee.  
 John J. Devos, Milwaukee.  
 Lawrence A. Olwell, Milwaukee.  
 John S. Stover, Milwaukee.  
 Eugene Wengert, Milwaukee.  
 Richard T. Reinholdt, Tomahawk.  
 Julius P. Frank, Appleton.  
 Thomas Henry Ryan, Appleton.

Your Committee, therefore, recommends that each of the persons named be elected members of the Association.

June 28th, 1916.

B. L. PARKER,  
 Chairman Committee on Membership.

THE PRESIDENT: Gentlemen, you have heard the report of the Committee. What is your pleasure?

JUDGE A. H. REID: I move the adoption of the Committee's report and that the persons whose names have been so reported and recommended be unanimously elected.

Motion seconded and carried.

JUDGE A. C. FOWLER: There seems to be some misunderstanding about whether the ladies are expected to attend the Bar banquet to-morrow night.

MR. DAVIDSON: Because of insufficient hotel accommodations gentlemen only will be entertained at the banquet. The Oshkosh ladies will entertain the visiting ladies at the Yacht Club on Thursday afternoon at the same time that the banquet is held at the hotel.

THE PRESIDENT: I have been requested to ask if there is any member of the Committee on legal education present, except Mr. Cady and Mr. Wilcox? If there is, Mr. Wilcox desires to meet the other members of the committee. The other members of the Committee are Mr. Hanitch, of Superior, who is not here; Dean Richards is not here; Charles T. Hickox, of Milwaukee, is not here; as also are R. A. Hollister, of Oshkosh, and Vroman Mason, of Madison, Mr. Cady is here.

THE PRESIDENT: The reports of the Secretary and Treasurer are the next order of business.

Secretary Morton thereupon presented his report as follows:

### SECRETARY'S REPORT.

Milwaukee, June 28, 1916.

The undersigned begs leave to present to the Association his report as Secretary covering the past year.

Pursuant to the direction of the Association and the amendment of the Constitution at the last meeting making the Clerk of the Supreme Court Assistant Secretary of the Association, the tin-box of records of the Association turned over to the undersigned at the time of his election first to the office of Secretary has been sent to the Clerk of the Supreme Court and will be kept there until other disposition is made by the Association. The present Clerk of the Supreme Court has not

heretofore been a member of the Association, but his application is presented with others for action at this meeting.

#### EXCHANGE LIST.

Action was taken at the last meeting with respect to reports to be furnished the members, but so far as your Secretary knows no formal action has ever been taken with respect to an exchange list, although there is in practical effect and operation such a list numbering about fifty. Numerous requests have been received for copies of the reports of the Association from institutions and from private individuals amounting to about fifty more. Probably there are as many more institutions which would like to be favored with a copy of the proceedings. To these requests your Secretary has responded by offering back reports at \$1.00 per volume and placing the library or institution requesting the reports upon the exchange list for future volumes gratis. It would seem almost necessary that some discretion be allowed the Secretary with respect to this matter, as it is impractical to present such a matter to several different officers of the Association. Your Secretary would, therefore, be pleased to have his previous action up to this time with respect to this matter approved, and have such freedom of action with respect to an exchange list and complimentary volumes granted in the future as seems to the Association proper.

The reserve supply of back volumes of the reports have heretofore been in the custody of the librarian of the University of Wisconsin Law Library, but it appears that caring for the exchange list is too much of a burden and the librarian has requested that she be relieved from it. The matter can be taken care of by the Executive Committee without doubt, but it should be brought to the attention of the Association itself so that the place of deposit of these books may appear in the published volume.

It is necessary, therefore, under the circumstances, to make a change in the custody of the books, and the State Law Library seems to be the logical place to which to transfer them, and the Librarian, Mr. Gilson G. Glasier, has consented to take them over under supervision of the Assistant Secretary and attend to the exchange list without charge to the Associa-

tion. This would bring the reserve volumes into the same building with the Clerk of the Supreme Court, who is made Assistant Secretary, and this seems the best disposition of the matter. Your Secretary, therefore, recommends that this be done.

#### AMENDMENTS OF CONSTITUTION.

Section 3. When Section 4 of the Constitution was adopted in its present form the fact was overlooked that county courts were included in the term "courts of record" and that some of the judges of the county courts of the state have not been admitted to practice law.

I call this to the attention of the Association so that if desired proper amendment of the Constitution may be made.

Your Secretary recommends consideration of the following amendment:

Section 13. The annual dues are hereby fixed at two dollars per year, commencing as of January 1, 1917, and shall be payable on or before the 1st day of June of each year. Any member subject to such dues who fails to pay the same prior to the 1st day of January following, shall stand suspended and his rights as a member cease except that he shall stand reinstated upon payment of all dues for which he is delinquent.

#### RESIGNATIONS.

Herman Pfund, of Madison, has resigned his membership.

#### ANNUAL REPORTS.

The question was raised at the last meeting of having annual reports published and the Association then decided to have this done. The experience of the past year, however, is somewhat against the continuance of this practice, both for financial reasons and otherwise.

The dues-paying membership of the Association, outside of applications of new members at this session, is 441. This includes some honorary members who have paid dues but who are not under obligation to do so and consequently may cease at any time.



At \$2.00 per year this would make the yearly income in the neighborhood of \$900.00.

The publication of the book covering one session cost, as shown this year, \$431.00. The publication of the preceding volume covering three years cost \$550.13. The salary of the Secretary and Treasurer as fixed by the Executive Committee is \$300.00 and other expenses, as shown by the Treasurer's report, this year have amounted to over \$300.00. The balance shown by the Treasurer's report is, therefore, about \$400.00 less than it was last year. In other words, although we have a balance of over \$1,600 on hand at this report, this balance will rapidly decline if annual reports are published. The only other alternative would be to raise the dues. Whether this is practical or not your Secretary cannot say and probably this matter should be considered by the Association. It is safe to say that it would be little more of a burden upon the members to pay \$3.00 instead of \$2.00, but whether it would be wise to return to that figure is another question.

By publishing the report bi-annually or tri-annually it would be unnecessary.

Another consideration in publishing the report annually is that the volume this year is but little over half as large as the volume covering three years.

Suggestion has been made by President Hudnall that the proceedings be prepared and published in pamphlet form each year and furnished the members and bound volumes prepared and issued once in two or three years and then distributed as now. This would meet the financial objection to annual reports.

Respectfully submitted,

GEORGE E. MORTON,  
Secretary.

SECRETARY MORTON: Mr. President, to get the matter before the meeting, I move that the Secretary's report be referred to a committee to be appointed by the President, or one of the standing committees selected by him to report later during the session.

Motion duly seconded and carried unanimously.

THE PRESIDENT: I will appoint that committee later.

Now the report of the Treasurer.

The Treasurer's report was thereupon read as follows:

## PROCEEDINGS

9

### TREASURER'S REPORT.

The undersigned begs leave to present to the Association his report as Treasurer covering the period from the date of the last report, July 14, 1915, to the date of this one, June 27, 1916.

#### RECEIPTS.

Balance on hand at last Report.....	\$2,022.82
Collections from dues.....	1,126.00
Collections from sale of Books.....	22.00
Refund from Evening Wisconsin.....	11.75
Interest on 2 Certificates of Deposit, \$500 each.....	67.16
Total Receipts .....	<u>\$3,249.73</u>

#### RESUME OF DISBURSEMENTS.

Expense account of Mr. Hazelton attending Superior meeting, advanced by Christian Doerfler.....	\$ 27.45
Expressage, etc. ....	4.86
Flowers for Mr. and Mrs. Shaw at last meeting (\$3) and H. C. Clark funeral (\$3.28).....	6.28
The Press-Gazette Job Plant, Green Bay, Membership Campaign Expense .....	29.25
Evening Wisconsin, postage for mailing copies of volume 10 .....	27.28
Evening Wisconsin, postage for mailing copies of 1915 report .....	20.22
Evening Wisconsin, printing Volume 10.....	550.13
Evening Wisconsin, printing 1915 report, printing envelopes, addressing copies to members, etc.....	431.00
Evening Wisconsin, printing account, printing envelopes for Volume 10, etc.....	41.75
A. B. C. Printing Co., receipts and notices and circular letters .....	57.31
W. R. Bagley, refund of dues paid by mistake.....	2.00
J. C. Hart, refund of dues overpaid.....	1.00
J. L. Cohen, Superior, reporting proceedings of 1915 Convention at Superior .....	55.00
Salary of Secretary and Treasurer.....	300.00
Stamps .....	27.00
Stamped Envelopes .....	26.06
Stationery account .....	.80
Telegram to G. B. Hudnall re R. C. Clark.....	1.00
Total Disbursements .....	<u>1,608.39</u>
Receipts as above .....	\$3,249.73
Disbursements .....	<u>1,608.39</u>
Balance on hand .....	<u>\$1,641.34</u>

Your Treasurer is pleased to announce that out of the whole membership of the Association only 27 are delinquent for dues prior to 1915, and but 47 delinquent for dues for 1915. Your Treasurer is also pleased to announce further that although dues for 1916 have been due and payable only since the 1st day of June that 275 have already paid for the current year.

The honorary membership because of the payment of fifteen years of dues now numbers 45, and because of incumbency of judicial office, 80.

The total dues-paying membership of the Association is 441, exclusive of the applications received during the past year.

Respectfully submitted,  
GEORGE E. MORTON,  
Treasurer.

SECRETARY MORTON: I move that this report be referred to an auditing committee to report later in the session.

Motion seconded and carried unanimously.

THE PRESIDENT: The motion prevails, and the Committee to whom I will refer the Secretary's report is Judge Winslow, Judge Reid and Mr. Goggins.

As the Auditing Committee I will appoint Senator Whitehead, Mr. Fairchild and Mr. Shaw.

THE PRESIDENT: The next order of business is the report of the Executive Committee.

No report by that Committee.

THE PRESIDENT: The next order of business is the report of the Judicial Committee.

George H. Gordon, the Chairman of the Committee being absent, this report was laid over until the next day.

As the report of the Committee on Amendment of the Law would occupy more time than then available, it was put over to a later session and a recess of ten minutes taken to give the invited ladies opportunity to be present at the address of Burton Hansen.

#### RESUMED SESSION.

PRESIDENT HUDNALL: Gentlemen of the Association, and Ladies: It affords me great pleasure at this time to introduce to you a Winnebago County boy, a boy who was raised on a

farm at Eureka, in the Town of Rushford, in this county. He is now general counsel of the Chicago, Milwaukee & St. Paul Railway. Between his humble beginning and his present position there is a field that is spanned by but few. I have great pleasure in introducing to you Mr. Burton Hanson, who will deliver an address to you on "Benjamin Franklin."

MR. HANSON: Mr. President, and Ladies and Gentlemen—It is very nice to hear such good things said of you. It reminds me somewhat of an incident. We have a couple of colored boys in our office. They are good boys, very much interested in their church. One morning Louis came in the office and said, "Mr. Hanson, we have got a new preacher in our church." I said "You had a good preacher, didn't you Louis?" "Yes, we had a good preacher, but we got a new preacher." A week or so ago one Monday morning he came in and said, "Mr. Hanson, I told you we had a new preacher in our church." I said "Yes." "Well," he says, "we didn't make any mistake. You know, Mr. Hanson, that new preacher yesterday prayed the Lord to give us a whole lot of things that the old preacher never supposed the Lord had to give away."

You are all familiar with that phrase of James Whitcomb Riley:

"I've got the hives and a new straw hat,  
And I've come back home where my folks live at."

I haven't the hives or a new straw hat, but I've come back home to dear old Winnebago, my native county. The memories of childhood days seem to be revived and made more precious as we advance beyond the half century mark; and while in the stress and anxiety of the daily round of cares and responsibilities that we all have to meet, we are apt to forget these far-off days, but when we get back to them it seems but yesterday since we left; and although most of the names that we used to hear have been carved for many a year on the tomb, we recall all without the slightest effort or hesitation. Who that was born in Winnebago County can forget Pulling and Gary, and Cleveland, and Bouck, Felker, Finch, Barber, Harshaw, Weisbrod, and a host of others. They were a group of noble men, all famous in their day, and now all at rest, but their places are secure in the esteem and affection of everyone who ever knew them; and I prize it among the durable satisfac-

tions of my life that I am privileged to return here, and on this occasion make mention of these illustrious names.

At request of Mr. Hanson, his address is omitted from temporary volume by order of Executive Committee. To be published in permanent volume.

PRESIDENT HUDNALL: Mr. Hansen, I assure you that we are very grateful for this remarkable address on such a remarkable man.

On motion of Judge Reid, duly seconded and carried, it was voted that the report of the Committee on Amendment of the Law be received at 9:00 o'clock A. M., the following day.

THE PRESIDENT: The Convention now stands adjourned until 8:00 o'clock this evening.

8:00 P. M., June 28th, 1916.

PRESIDENT HUDNALL: Ladies and Gentlemen, it affords me extreme pleasure this evening, to present to you a man who needs no introduction to the lawyers of the State of Wisconsin, Justice Rosenberry of the Supreme Court of Wisconsin, will now address us on "Will the Bar furnish our Leaders in the Impending World Crisis."

Justice Rosenberry: Mr. Chairman, Ladies and Gentlemen of the Bar. I hardly feel that I can proceed with the matter of this address without at least paying a brief compliment to the very splendid paper which we heard this afternoon, which I am sure was a great delight to everyone who heard it. I want to assure you that this program at least in one respect differs from some programs in that you have the best first, and I hope that you won't expect too much.

Address read. (See Appendix p. 93.)

THE PRESIDENT: I think that I can assure Justice Rosenberry that the Association is greatly indebted to him for this able paper on this timely subject. Thinking possibly that we will derive some benefit from a discussion of this paper, and it being the only thing on the program this evening, I have concluded to ask two ex-presidents of the Association, Mr. Bird and Mr. Doerfler, to take part in the discussion of the paper just read by Justice Rosenberry.

Discussion of C. B. Bird without notes. (See Appendix p. 110.)

Discussion by Christian Doerfler, without notes. (See Appendix, p. 112.)

On motion of A. L. Kreutzer, duly seconded and carried, the President appointed Justice Winslow, Judge Reid, Roy P. Wilcox, A. J. Schmitz, and Judge Hastings as a committee of five to nominate officers for the Association for the next year.

The meeting was thereupon declared adjourned until 9:00 o'clock of the next morning.

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THURSDAY MORNING SESSION.

9:00 A. M., June 29th, 1916.

Meeting called to order by the President.

JUDGE FOWLER: There was a meeting of the Wisconsin Branch of the American Institute of Criminal Law and Criminology, and they directed me to request of this Association the appointment of a Committee upon Criminal Law and Criminology. I do not care to make a motion before this body to that effect, but if it appeals to the members of the Association, I would be glad if somebody else would do so. I will only say in connection with it that the principal reason for that seems to be that several times when that body has presented matters to the legislature, the members of the committee before whom they appeared, have asked if the proposition had the support of the State Bar Association, and not having that support it seems to have had some influence in the consideration of the proposition.

MR. GARD: I was present and heard the discussion yesterday morning. It seems to me the proper thing to do would be to appoint such a committee. I move that a committee of five be appointed.

Motion duly seconded and carried.

THE PRESIDENT: I assume that Committee is to be appointed by the President of the Association, and I will leave its appointment to my successor.

We have always had with us, I believe, at all former meetings of this Association, a gentleman who is very much interested in the Association, and has always taken an active part in it, and who was at one time president of it. He has written that he will be unable to be here for the meeting this

year, on account of the death of his brother. I refer to Lyman J. Nash, the reviser, and he wished that the statement be made to the Association, of the reasons why he was unable to attend this session.

The first thing on the program, and what we will now proceed to take up is the discussion, "Should the Various Municipal Courts of Wisconsin, Outside of the County of Milwaukee, be Standardized?" The affirmative is by Judge Chester A. Fowler, the negative by Senator Timothy Burke.

JUDGE FOWLER: Mr. President and Gentlemen. I don't know but what I will have to come before the Association with an apology. At a judges' meeting last winter I delivered some remarks, or was accused of doing so, and the inference I think went out that I had a very strong opposition or feeling against Municipal Courts. I will only say in that connection, that the only suggestion I made with reference to Municipal Courts was that in my judgment a law should be passed authorizing the Circuit Courts to send to local Municipal Courts, under any circumstances in which they might send a case to an adjoining circuit, or call in a judge to try the case, any case for trial of which that local court would have had jurisdiction if it had been brought in that court in the first instance. I really think there is nothing in that recommendation that is subject to criticism, at least on the ground that I am especially opposed to Municipal Courts. The idea merely was, that as long as we have them and as long as we are going to have them, to make the most possible use of them as an aid to the transaction of public business.

Address read. (See Appendix, p. 117.)

THE PRESIDENT: The negative of this question will now be discussed by Senator Timothy Burke.

MR. BURKE: Mr. Chairman, and Gentlemen of the State Bar Association. With a question of this kind, like all other questions, there is room for discussion and debate. It simply happens that in a discussion of human affairs there is no fixed standard or gauge by which human judgment can be measured. In other words, we cannot put the opinions of one man, or two men, or a dozen men who may differ with each other, up to some fixed standard of measure, and say that one is right and the other is wrong. There is always some justice, and some logic, and some reason in every argument advanced

by everybody on every question. So conceding the virtue of necessity, its honesty of purpose, logic of thought, I will attempt to take a stand which will be somewhat at variance with the propositions advanced by our friend Judge Fowler.

Address read. (See Appendix, p. 131.)

**PRESIDENT HUDNALL:** Are there any of the gentlemen present that desire to say anything one way or the other on the subject now under discussion? We would be very glad to hear from anyone on either side of this question, if you have anything to say.

**JUDGE CHARLES C. SMITH:** Mr. President, I do not wish to amplify the discussion of the question which has just been presented, but I have a feeling that a discussion of this sort ought not to be fired off into space and extinguished like a 4th of July rocket, leaving nothing but the memory of the brilliant flash. It seems to me that such discussions ought to be conducted with a view to possible action by the Association. That is the way to magnify the importance of the Association and justify its existence.

I should like to move, therefore, Mr. President, that the addresses to which we have listened be referred to the Committee on Amendment of the Law, with instructions in the name of the Association, to support the recommendation of the Committee headed by Judge Winslow, and to report to the next meeting of the Association what if any, further action by the Association, is desirable in the way of standardization of Municipal or inferior courts.

Motion duly seconded and unanimously carried.

**THE PRESIDENT:** The reference is made.

The next question for discussion on the program was suggested by Justice Timlin. It is stated on the program in the exact language of the Justice. In writing me regarding the question, he said,—I meant to have brought his letter, but I think I can state the substance of it—that formerly the Supreme Court interfered with the verdicts of the juries only when they were convinced that the jury had been biased or prejudiced in the trial of the case. He said, later the practice of the Supreme Court in his opinion, had not strictly conformed to that standard, and he for one, would like to have the question discussed by the Bar of the state. The question for discussion is, therefore, should the present practice of the



Supreme Court in reducing verdicts of juries, prevail, or should we return to the former practice of interfering in verdicts, having the Supreme Court interfere in verdicts of juries only when they were convinced that the jury was actuated by malice or prejudice, or some such reason. There is really no affirmative or negative of this question. Roy P. Wilcox will discuss the question and present his views in favor of the present practice, while Mr. P. H. Martin will present his views against the present practice.

**MR. WILCOX:** Mr. Chairman, and Gentlemen of the Association, and Ladies: At the request of a number of the members, Mr. Martin and I have come up on the stage to read our papers, because they said they did not hear very well in the back of the room when the speaker stood on the floor.

Address read. (See Appendix, p. 134.)

**THE PRESIDENT:** Mr. Martin will now present his views against the present practice in Wisconsin.

Address read. (See Appendix, p. 145.)

**PRESIDENT HUDNALL:** Gentlemen, what is your pleasure regarding the subject just discussed? Does anyone care to discuss it any further, or do you care to take any action? If not, that finishes the program for this forenoon, and we will now adjourn until 2 o'clock.

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#### THURSDAY AFTERNOON SESSION.

2:00 P. M.

Convention called to order.

The President then announced an automobile ride for the ladies at 6:00 P. M. from Hotel Athearn to the Yacht Club, and entertainment by the Local Bar for the next day—boat ride at 10:00 A. M.; on return of boat, luncheon for the ladies at Hotel Athearn and buffet luncheon and smoker for the gentlemen down stairs in the building where meetings were being held.

**THE PRESIDENT:** I consider it a great honor to have the Bench and Bar addressed by the next speaker on the program. It affords me great personal pleasure to have the honor to introduce to you Ex-Governor and Ex-Chief Justice Baldwin of

Connecticut, who will now address you on "Our Treaty Obligations."

Address read. (See Appendix, p. 156.)

THE PRESIDENT: Governor, on behalf of the State Bar Association, I wish to thank you for the able address on this timely subject. I think that there has been a matter referred to the Executive Committee on which they have not acted. We will now take a recess of ten minutes, and I will ask the Executive Committee to come up on the platform, and we will take up that matter which was referred to them, and then reconvene and finish the business session.

(Recess for ten minutes.)

THE PRESIDENT: Gentlemen of the Association: I have just received this telegram, which I think I ought to read.

"Elkhorn, Wis., June 29, 1916.

President State Bar Association, Oshkosh, Wis.

We very much regret that unavoidable legal entanglement prevents our sharing the benefits of the State Bar Meeting, and we send our cordial greetings, and express the hope that hereafter it will be considered treasonable for any court to be in session the week of the Bar meetings.

Signed:

E. B. BELDEN,  
ALEXANDER E. MATHESON,  
HENRY LOCKNEY,  
PETER J. MYERS,  
J. W. PAGE."

THE PRESIDENT: Now we will take up the unfinished business where we left it off yesterday, and the first will be the

## REPORT OF THE COMMITTEE ON LEGAL EDUCATION.

ROY P. WILCOX: Mr. Chairman and Gentlemen of the Association: I regret to say that the Committee on Legal Education has not a unanimous report to make to this body. The meeting of the Committee was held some time ago at Madison, at which Dean Richards, Mr. Hickox of Milwaukee, Vroman Mason of Madison, and myself, attended. At that

time no report was formulated, but the substance of a report was talked over, and there was some disagreement at that time. The rules of the bar examiners were not at hand so that we could not compare the present rules with the ideas suggested, especially by Dean Richards, so the matter was left for him to prepare a tentative report, and send a copy to each member of the Committee, together with a pamphlet containing the rules of the bar examiners, and the statutes on the subject, which they published, and then each member was to examine it and the tentative report and make such comment as he desired, and a new report was to be prepared. Dean Richards, however, was obliged to leave for Michigan, where he is teaching in a summer school, and he did not get these reports to any of us until Monday of this week, so it has been impossible to get the Committee together, and formulate a new report. I have had a letter from Mr. Hickox, and a letter from Mr. Mason, who should have presented the report to-day, but he has been called West, and forwarded it to me to be presented; so that the only members of the Committee present are Mr. Cady of Green Bay, and myself. We have concluded to present to the Association the tentative report prepared by Dean Richards, the letters of suggestions and criticism received from Mr. Mason and Mr. Hickox and then a short supplemental report upon which Mr. Cady and I agreed and have signed. That is the best we can do. This is the report prepared by Dean Richards, which I will read first as follows:

June 22, 1916.

Dear Mr. Wilcox:

I enclose copy of the report I prepared to present to the Bar Association. I have been delayed in getting out this report, and as the time is short, I suggest that you send any comments or criticisms to Vroman Mason, Madison, Wis., who will incorporate them in a revised report to be submitted at the Oshkosh meeting.

Yours very truly,

H. S. RICHARDS.

Mr. R. P. Wilcox,  
Eau Claire, Wis.

## REPORT COMMITTEE ON LEGAL EDUCATION..

PROPOSED BY H. S. RICHARDS.

To the Bar Association of Wisconsin: .

In the annual address of the president of the Association in 1914, attention was called to the growth of practices within the profession which tended to lower its tone, and subject it to public criticism. Many of the evils were attributed to the overcrowded condition of the profession, and the suggestion was made that some plan should be devised (1) to give the State Bar Association control over disciplinary matters and (2) to restrict admission to the bar, so that the amount of legal business and the membership of the bar, would more closely correspond. This suggestion was referred to the Committee on Legal Education by the Association. At the annual meeting in 1915, your Committee submitted a report approving of the idea of more direct control by the Association in disciplinary matters. On the question of limiting the membership of the bar, the Committee was of the opinion that any attempt to limit the membership of the bar by fixing the number of members was impracticable, and if feasible in other respects would fail of legislative and judicial sanction. The Committee suggested that the end sought by our president could be in a large measure attained by a more stringent scrutiny of the character of applicants for admission to the bar, and insistence on a broader general education, and the requirement that the period required for legal study be strictly devoted to the study of law.

While recognizing the desirability of a college and law school education as well as office training for members of the bar, your Committee did not deem it feasible to adopt such proportion as a minimum standard, but did recommend a stricter enforcement of the present requirements, and to that end recommended the adoption of regulations compelling the applicant to make proof (1) as to his general education to the Board before beginning the study of law; (2) to give formal notice to the Board at the time the legal study is commenced, proof that the student has devoted his entire time to the study of law for three years; (3) strict inquiry as to the character of the applicant; (4) examination to determine the applicant's

understanding and appreciation of the obligation of an attorney to the court, the public, and his clients; (5) inquiry by the Board as to the reputation and character of attorneys from other states who seek admission to the bar of Wisconsin without examination.

In making these recommendations the Committee merely adopted the rules formulated by a Committee of the American Bar Association, on standard rules for admission to the bar. Similar provisions have been in force in a number of states for many years (Pa., Mich., Del., R. I., So. Dak.,) with uniformly satisfactory results.

On the submission and discussion of the report, the Association adopted the following resolution: "*Resolved*, That the Association memorialize the Supreme Court to consider the advisability of advancing the general educational qualifications of applicants for admission to the bar, and of more effective regulations with respect to the registration of law students, and the verification of studies pursued by them." In response to this memorial the Supreme Court has formulated a statement which will be submitted to the Association at the present meeting.

Your Committee has had an opportunity to examine this statement in which the Supreme Court declines to take any action. The court strongly endorses the views of the Committee as to the desirability of a broader and more thorough training for a lawyer, but declines to take action for fear that any considerable restriction would result in legislative action imperiling standards already secure, and because any further burdens imposed on the Board of Bar Examiners would increase the already great difficulty of securing the best legal talent for service on the Board. The Court pays a deserved tribute to the fidelity and ability of the present Board, a tribute which the committee and every lawyer in the state who knows of the great amount of labor and time required for the discharge of their duties will most heartily endorse. The Court concludes that the regulations suggested would work hardship in particular cases and that after all the applicant's legal knowledge is satisfactorily determined by the examination.

The Court erroneously assumes that they are asked to require at least two years of college training as a minimum of prelegal training. Such was not the recommendation of the

Committee. When the applicant has not pursued a high school or college course recognized under the present rules, he should be compelled by suitable examination to display such knowledge of history, institutions, social and economic principles, and problems and an ability to express himself in clear, terse English, as will stamp him as a man of more than ordinary intelligence. Such knowledge can be acquired by private reading and study, and its requirement will work no hardship to men of the right calibre for lawyers. The present rule permitting the proof of prelegal study, at the time of the legal examination in practice results in a lax enforcement of this regulation. [There is a disposition to allow the legal examination determine the general educational fitness.] Registration at the beginning of legal study has already been approved by the Board, as rule 4 requests, but does not require students to so register. In this permissive form the rule is of no force. Your Committee does not agree with the Court that the legal examination alone should be regarded as a sufficient test. Massachusetts for many years required only an examination as a test, but this practice has been abandoned there and elsewhere. The fitness to practice is not a matter of knowledge so much as an ability to handle legal questions in a lawyer-like way. This ability is the result of a considerable period of training and thinking about legal problems. If the rules were so formulated and enforced as to insure that the candidate has devoted the period of time prescribed to legal study, it is the belief of the Committee that much of the present burden of the examiners would be relieved. It would not be necessary to devote so much time to the legal examination or to make that examination so comprehensive in scope. The chief purpose of an examination should be to test the applicant's ability to make reasoned applications of legal rules and principles to concrete problems. An examination of comparatively limited scope will do this as effectively as the present long examination, and relieve the Board of the labor and drudgery of examining thousands of answers. Adequate preliminary requirements strictly enforced would justify the presumption that a person complying therewith would normally be fit to be admitted to the bar, and the role of the examination would be that of a final check and not the sole basis of admission.

It is the belief of the Committee that the Bar Association will strongly support the Court in such regulations as will assure admission to the Bar of men who have a good general education whether acquired in school or by private study, and who have made the study of law their principal concern for the time prescribed by law, whether that study be in a law school or office. To that end we renew our recommendation for a registration system for law students, in the belief that it will relieve the bar examiners of the most exacting and disagreeable features of their present duties, as well as assure the indispensable training for the applicant.

The present compensation of the Board is obviously inadequate. In the opinion of the Committee it will be possible to secure legislative sanction for more adequate pay. The fees of the applicants are low as compared with those charged in most northern states. An increase is desirable not only to make possible more adequate compensation for the Board, and as deterrent to applicants, who now take the examination with insufficient preparation. The large number of examinations add very greatly to the burdens of the Board.

Respectfully submitted,

Milwaukee, Wis., June 26, 1916.

Mr. Vroman Mason, Madison, Wisconsin.

Dear Sir:—I have received from Dean Richards the proposed report of the Committee on Legal Education to the coming meeting of the State Bar Association, with a suggestion that I forward to you "any criticisms or comments" I may have. In response to this suggestion I am persuaded to comment as follows:—

The last two paragraphs of the proposed report have my hearty approval, but I am in doubt about part of the paragraph preceding the last two.

I do not understand, for instance, that the Supreme Court regards "the legal examination alone \* \* \* a sufficient test" or that "there is a disposition to allow the legal examination determine the general educational fitness." Any way, I disclaim any wish to criticise either the Court or the Board of Examiners.

It seems to me the rules adopted by the Court pursuant to the power conferred by Section 2586 are sufficiently broad not

only to exclude the unfit but to allow the Board a very wide discretion as to fitness; and I would regret any change that would call back to the Legislature the power given the Supreme Court in the matter.

Rule 6 adopted by the Court contemplates a preliminary examination as to "the general educational qualifications" of every applicant who is not a graduate of a free High School (having a four-year course of study) or of some higher school. This preliminary examination may be made by the Board, a High School Superintendent or some person designated by the Board, but it is provided,—and the Board should, and as I had supposed did, obey it.

Registration at the commencement of legal studies and compensation sufficient to encourage advance investigation of moral and educational fitness and of time devoted to legal study is, it seems to me, all the legislative change now needed.

This might be followed by a resolution of the Association encouraging the Board of Examiners to strictly enforce the requirements as to registration, preliminary education, proof of moral character and time devoted to legal study.

I have no doubt the Board could and would gradually raise the standard of fitness if thus encouraged by the Association and if properly compensated for the service required.

Yours very truly,

CHARLES T. HICKOX.

Madison, Wis., June 27th, 1916.

Mr. R. P. Wilcox, Hotel Athearn, Oshkosh, Wis.

My Dear Mr. Wilcox:—I have been so busy trying to get my own affairs in shape to leave town that I did not read over Dean Richards' tentative report until you returned it to me. In the meantime I have received the enclosed letter from Mr. Hickox.

After reading over what Dean Richards drew up I am inclined to agree with Mr. Hickox. While I do not think Dean Richards desires anything that we are not all agreed upon, I think that some of the language used is unfortunate. In view of the fact that the Committee was not able to meet and draw up a formal report agreed to by majority, my suggestion would be that you make an oral report for the Committee following Mr. Hickox's suggestions and that the Committee



makes the recommendation suggested in the concluding paragraphs of Dean Richard's report.

Yours very sincerely,

WROMAN MASON.

Mr. Wilcox then read the report of Samuel A. Cady and Roy P. Wilcox, as follows:

To the Wisconsin Bar Association:

The undersigned members of your Committee on Legal Education, beg leave to submit and recommend the following:

(1) We do not concur with the statements made in the report signed by Dean H. S. Richards.

(2) We believe that proof of prior legal education is now adequately covered by Sec. 6 of the Rules of the State Board of Bar Examiners.

(3) We do not consider practical a requirement of registration, prior to commencement of legal study for the reasons mentioned in this communication of the Supreme Court and for the further reason that a qualified person might have successfully passed similar examinations and completed this required term of study in a law office in another state and yet might not have practiced there the five years required to admit him in Wisconsin without examination. Under such circumstances upon coming to Wisconsin he could not take an examination until he had registered and awaited the passage of another three year period.

(4) We recommend that the practice of requiring applicants for examination by the State Board of Bar Examiners to furnish certificates of their moral character be discontinued and that in lieu thereof each applicant be required to submit, as a part of his application, the names of four attorneys residing in the city where he has studied law, together with that of the Circuit Judge of the circuit wherein such city is located.

That thereupon said Board send to such attorneys and judge suitable inquiries as to the moral character, habits and antecedents of such applicant with blank spaces for answering such inquiries with the request that they fully answer all of the same in strict confidence and return them to this Board within a designated time. And in order to fully carry out this recommendation the members of the bar of the state are

urged to give to the Board full and complete information as to the moral, intellectual and temperamental fitness of such applicant to become a member of this profession.

ROY P. WILCOX,  
SAMUEL H. CADY,  
R. A. HOLLISTER.

June 29, 1916, Oshkosh, Wis.

**THE PRESIDENT:** The Secretary has a communication from the Supreme Court, which he will now read.

Report read by Secretary Morton as follows:

### SUPREME COURT.

To the Wisconsin Bar Association:

Gentlemen: At the last meeting of your Association held in July, 1915, at Superior, the following resolution was adopted:

"In pursuance of the recommendations of the Committee on Legal Education,

*Resolved,* That the Association memorialize the Supreme Court to consider the advisability of advancing the general educational qualifications of applicants for admission to the bar and of more effective regulations with respect to registration of law students and the verification of studies pursued by them."

Copies of this resolution together with copies of the Committee report on which it was based were in due time forwarded to the Justices of the Supreme Court and have received careful consideration.

With all that is said by the Committee as to the desirability of maintaining high educational requirements for admission to the bar, as well in the line of preliminary general education as in the line of technical legal education, we are in full accord. More perhaps than any other class of professional men the lawyer and judge need broad and comprehensive education; they touch life at many angles and are daily dealing with practical problems of the most diverse character and they need accurate learning in all lines of human endeavor as well as the greatest possible breadth of view. The advance in the standards of legal education during the last quarter of a century has been very great and very satisfactory; the half educated

lawyer is gradually disappearing; the pettifogger and shyster are becoming more rare; the level of the profession is steadily rising. Inasmuch as a greater percentage of lawyers are obtaining their legal education in law schools every year, it seems that the law schools must be credited with a generous share of the credit for this improvement. The time may come when all law students will attend law schools, and when the standards of the schools themselves will be uniformly high, but that time is yet far away and we must consider and adopt our actions to existing conditions. For years in the future there will annually be many applicants for admission to the bar some of them of conspicuous ability who have been unable to obtain a complete general education and have not attended any law school. To provide for the examination of this class of applicants and the admission of such as are entitled thereto a Board of Law Examiners of some kind will necessarily be required. The report of your Committee recognizes this situation and makes specific recommendations regarding additional requirements which it is thought should be prescribed by the Court and enforced by the Board of Law Examiners.

These suggested requirements are:

(1) Proof of completion of the required preliminary education prior to the beginning of legal study (i. e. at least two years of a college course.) (2) notice by the student to the Board of Law Examiners at the time the legal study begins; (3) proof that the student has devoted his entire time to the study of law for the period required by law in the office of an attorney in active practice; (4) strict inquiry by the Board of Examiners as to the character and antecedents of all applicants; (5) an examination of the applicant to show his understanding and appreciation of the duties and obligations of an attorney to the Court, the public, and his clients; (6) in the case of attorneys seeking admission to the bar of Wisconsin on the ground of their admission and practice in another state, the motion for enrollment should not be considered until the Board of Bar Examiners has made a full investigation of the character and professional reputation of the applicant in the state of his prior residence and reported their findings to the Court." We shall consider these suggestions in their order.

The first recommendation is doubtless the most important

and far-reaching. The present minimum requirement is a completed high school course or its equivalent. The question is whether we have yet reached the point where it is wise to lay down such a requirement as the one proposed. Upon this proposition much might be said. The argument in its favor is probably as strongly put as it can be in the report of the Committee and that argument is in brief that the members of the Bar ought to have the best possible education in order to perform their important duties to their fellow men and that the time has now come when an inflexible rule of this nature may be successfully enforced by the Bar Examiners as it is already enforced by the Law School of the University of Wisconsin. As we have previously indicated in this report we are in hearty accord with the premises; we are not yet convinced, however, that the conclusion follows. Notwithstanding the fact that this Court has been given power to prescribe the qualifications of applicants and the standards of admission, it must be remembered that under our system the legislature has always claimed and exercised ultimate authority in these matters, and that a drastic step of this nature suddenly and greatly elevating the standard of preliminary education is quite sure to meet much adverse criticism and doubtless induce efforts to procure legislative action not only overturning it, but taking steps backward. The progress which has been made in the elevation of the standards of legal education in the last quarter century is very great. Those of us who remember the days when a committee of personal friends of the applicant addressed to him a few formal questions and recommended his admission because he was a good fellow, can bear testimony to the great change that has taken place. But this change has been gradual; it could not have been accomplished at a single step. The changes in the future must also be gradual if they are to be permanent. Have we yet reached the point where it is just and wise to say to every law student that he must abandon all hope of admission to the Wisconsin bar until he has taken the first two years of a college course? This is the question and upon this question the Justices feel that they are not convinced. It is beyond doubt that there are at every examination applicants who have been unable to take two years of a college course, but whose abilities, character and legal acquirements fit them to take good rank in the pro-

fession. That this condition will continue for years in the future seems certain; and the question is whether the doors of the profession shall be irrevocably closed to this class? We do not attempt to argue out this question here but simply to state our conclusion and that conclusion, as already indicated, is in the negative.

The second suggestion, namely, that every law student be required to give notice to the Board of Law Examiners at the time his legal study begins seems likely in some cases to sacrifice substance to a procedural requirement. After all, the great thing is to ascertain that the applicant has or has not the required legal knowledge. Under the existing rules he is required to prove that he has studied law for three years and must then demonstrate his fitness for the bar by passing the examination. If these requirements are honestly and carefully carried out (as we think they are) nothing more would seem necessary. If the additional suggested requirement be imposed it must of course be made an imperative requirement or it is worthless. If made imperative it might well happen that a fully prepared applicant would be obliged to wait for two or three years because he was not informed of the rule or because of inadvertent failure to give notice of the commencement of study.

As to the third suggestion, namely, that the applicant who has studied in a law office be required to prove that he has devoted his *entire* time to the study of law for the period required by law, namely, three years, we think it would be difficult if not impossible for great numbers of deserving students who are pursuing their studies actively, but are still under the necessity of earning their way to make this proof and we do not approve of the suggestion.

As to the fourth, fifth and sixth suggestions, they are entirely admirable and the only question is as to the practicability of imposing them as imperative requirements on the Board of Examiners under present conditions.

We are convinced that the majority of the bar know little of the amount and high quality of the work now done by the Bar Examiners. These gentlemen spend nearly or quite two months of the year in the work and while examinations are in progress they work night and day. For this exacting labor they receive ten dollars per day. This court in making ap-

pointments to the board has endeavored at all times to call into service men of high standing at the bar whose very names would be guarantees that the work would be conscientiously and ably done, and we believe this effort has been successful in the past as now. Such men are compelled to make a considerable pecuniary sacrifice every day of their service; they do this in loyal response to the appeal which the Court always makes to them when the appointment is made, namely, the appeal that to act on this board for a few years is simply to discharge a public duty which the educated lawyer owes to his profession and to the state.

We should hesitate long before we laid any greater duties upon this ill paid board of public servants, and furthermore we should feel that if their duties are to be substantially increased (as these suggestion would increase them) we should find it doubly difficult to procure the services upon this board of that class of lawyers who ought to be there.

There are of course two alternatives, one is to appoint on the board men who do not ordinarily in their business make the per diem allowed by the state for this service and who would consequently be willing to spend a large share of their time at the work, and the other would be to procure, if possible, legislation largely increasing the compensation of the members and providing a full salary for at least one man who would devote his whole time to the work as secretary. We apprehend no one would approve of the first course suggested even if the present funds were sufficient to meet the necessarily increased expense, and we doubt greatly whether legislative approval of the second alternative could be obtained.

We fully believe that the Bar Examiners are now doing very excellent work and we do not believe that any additional requirements should be made of them under present conditions. In order to show the requirements now made of applicants we attach to this report a copy of the blank application now required to be completely filled out by every applicant for admission.

Respectfully submitted,  
Jno. B. WINSLOW, C. J.

### APPLICATION FOR EXAMINATION BY THE BOARD OF LAW EXAMINERS.

To the Board of Law Examiners of Wisconsin:

**GENTLEMEN:**—I hereby make application for examination for admission to the bar of Wisconsin and for that purpose make the following statement:

My full name is.....

I am.....years of age. I am a citizen of the United States.

My actual residence is.....

My postoffice address is.....

My residence during the last five years has been.....

My occupation during the last five years has been.....

My education, exclusive of the study of the law, has been as follows: .....

I have actually, and in good faith pursued the study of the law for at least three years within the five years preceding this application, as follows: (1).....

My study of the law embraced all of the subjects mentioned in section nine of the rules of the supreme court relating to the examination of applicants for admission to the bar.

The blanks in this application have been filled by me.

I herewith submit:

1. The certificate of.....as to my law studies in (2).....
2. The certificate of.....as to my law studies in the office of an attorney.
3. The certificate of.....and.....as to my moral character.
4. The certificate of Hon. ....judge of the.....court for.....county, Wisconsin, as to my moral character (3).

STATE OF WISCONSIN, } ss.  
.....County. }

being duly sworn, says that he is the applicant above named; that the statements contained in the foregoing application are true to his own knowledge.

Subscribed and sworn to before me this.....day of....., 19.....

Notary Public.

(1) State name and address of school and of attorney as required by Rule 7 of supreme court rules.

(2) Insert name of school.

(3) This certificate is not required when a certificate of two lawyers is presented.

**NOTE:**—This application and the accompanying certificates are required to be delivered or mailed to the Secretary of the Board

of Law Examiners at least thirty days prior to the meeting of the Board at which the applicant desires to be examined. Rule 7, Supreme Court Rules.

CERTIFICATE OF PRESIDENT OR OTHER OFFICER OF SCHOOL.

I, the undersigned, ..... of .....  
in the state of ..... do hereby certify that  
I am the (1) ..... of the (2) .....;  
that I am acquainted with ..... who is about to  
make application for examination by the board of law examiners  
for Wisconsin for admission to the bar; that he has pursued the  
study of the law in said (2) .....; that he  
commenced the study of the law therein on the ..... day  
of ..... 19...., and actually pursued the same in  
good faith, as follows: .....

Dated the ..... day of ..... 19....

- (1) State office held.
- (2) Insert the name of university, college or other school.

CERTIFICATE OF THE LAWYER IN WHOSE OFFICE THE APPLICANT PURSUED HIS STUDY OF THE LAW.

I, the undersigned, ..... of the .....  
in the state of ..... do hereby certify that I am  
a practicing lawyer residing at ..... in said  
state; that I am acquainted with .....  
who is about to apply to the board of law examiners for Wisconsin  
for examination for admission to the bar of said state; that he  
entered (1) ..... and commenced the study  
of the law therein on the ..... day of ..... 19...;  
that he actually pursued the study of the law in good faith in such  
office as follows: (2) .....

and that I believe him to be a person of good moral character and  
know no reason why he should not be admitted to the bar.

Dated ..... 19....

- (1) Insert "my office" or "the office of the firm of which I was a member."
- (2) State as nearly as possible the precise time he was engaged in the actual study of the law.

CERTIFICATE OF TWO LAWYERS OF CHARACTER OF THE APPLICANT.

We, the undersigned practicing attorneys residing in the county  
of ..... in the state of Wisconsin, do hereby  
certify that we are acquainted with .....  
who is about to apply to the board of law examiners for Wisconsin  
for examination for admission to the bar of Wisconsin; that



he is a person of good moral character and that if otherwise qualified we believe him to be a proper person to be admitted to the bar of this state.

Dated....., 19....

.....  
.....

# CERTIFICATE OF A JUDGE OF THE CHARACTER OF THE APPLICANT.

I, the undersigned, ....., judge of the  
..... court for the county of.....  
in the state of Wisconsin, do hereby certify that I am acquainted  
with ....., who is about to apply to the  
board of law examiners, for Wisconsin for examination for admission  
to the bar of Wisconsin; that he is a person of good moral  
character and that if he is otherwise qualified, I believe him to be  
a proper person to be admitted to the bar of this state.

Dated....., 19....

Judge of the..... Court for the county of.....  
in the state of Wisconsin.

THE PRESIDENT: Gentlemen, you have heard the report  
of the Committee on Legal Education. What is your  
pleasure?

MR. CADY: Mr. President, and Gentlemen of the Association. I do not feel that I would be justified in permitting the statement of Dean Richards to become a part of the records of this Association, without a word, if you please, of defense on the part of the Board of Bar Examiners. The suggestion is made in Mr. Richards' draft that we have been lax in the matter of the enforcement of examinations with reference to preliminary education, and the suggestion is further made that we have permitted the examination as to legal qualifications to be the basis, and the sole basis of pre-legal education. I want in explanation of that statement to say that probably Mr. Richards is not acquainted with the facts. As a matter of fact if any man makes an application to take the examination, and he has not a diploma from a high school or some other institution, we appoint some competent person in the state convenient to his location, to conduct the examination, and it is upon the certificate of that examiner that we rely in permitting him to take the examination. So much for that. As Mr. Wilcox suggests, usually the Board has appointed some school teacher or superintendent of public instruction of some city to conduct the examination; Mr. McLenegan, of Milwau-

kee, having done a great deal of it in behalf of the Board. You notice the recommendation by simply a minority of the Committee, Mr. Wilcox and myself, with reference to furnishing information to the Board as to the moral fitness of applicants. I don't know whether all of you realize how this matter started. Two years ago it was brought upon you, or you brought it upon yourselves by reason of certain irregularities, shall I say, unethical practices of two certain members of the profession of the state, and as has been suggested, the question came up as to how to reduce those. I am not going to discuss that question. I am simply going to appeal to you, Gentlemen of the Bar of Wisconsin, to assist the Board of Bar Examiners in keeping out, in the first place, men who are not qualified by reason of their morals or their temperament, or their habits, from becoming members of the profession. We know because of actual observation that frequently when you are called upon to certify that John Jones is a young man of good character, and has studied so many years, that you just sign your name and don't pay very much attention to what it means. Now the Board wants, and our successors will want, the honest, candid facts with reference to these applicants, and we ask you when these certificates are sent to you that you furnish that information. It is unnecessary to say that it will be confidential information, but it will assist us materially in ridding the bar of that which the Association aimed to rid itself of back two years ago when this first step was taken.

THE PRESIDENT: Gentlemen, what will you do with the report?

MR. GILMAN: Mr. President, there is one part of the report of the minority of the Committee that seems to me needs to be amended slightly. They recommend that each candidate for taking the examination be required to give the names of four reputable attorneys in the city in which he lives.

MR. WILCOX: No, the city in which he studied.

MR. GILMAN: Well, in the city in which he studied. It seems to me it ought to be made the county rather than the city, because there are many worthy men who studied in offices in cities having less than 4 attorneys.

MR. WILCOX: Yes, that is so.

PROF. HOWARD L. SMITH: I think there are some counties

that have not four attorneys; for instance, Forest County, Mr. President, I am very glad indeed that Mr. Cady has made the statement that he has, and appealed in the earnest way that he has to the members of the bar here present, for their co-operation in effecting the working of the machinery of the Bar Examiners. It is an appeal which needed to be made. I should have hesitated to put the matter as bluntly as he has, but a practicing attorney and a member of the Board can say things to you frankly, things we could not and would not dare to state. There is no doubt whatever that the certificates furnished by members of the bar as a basis for examinations to be given by the Board are very lightly given. Men come to us in the law school time and again, not pretending to have studied law at all; not giving any evidence of ever having studied law at all. They stay with us for a year or 18 months and go down and have an occasional examination before the Board of Examiners. They do so upon certificates that they have obtained from attorneys somewhere, that they have studied law for 3 years, for that is a prerequisite to the right to take the examination. It was with a view to eliminating the practice, to remove from the bar the temptation to be careless in an important matter, as well as from the temptation to begin their practice of law in such an undesirable way that the practice recommended by the American Bar Association was advocated, the practice which has been in force in the State of Pennsylvania for 25 years without any criticism, the practice which is in force in Michigan, of requiring candidates who wish to take the examination, to register at the beginning of their legal studies. Register with the Board, or with the Clerk of the Supreme Court, or possibly with the Circuit Court in the district in which they are studying. That is a mere matter of detail. I feel very sure that Mr. Cady has misinterpreted the report which Dean Richards drew up, and which I know he thought expressed what the Committee had substantially agreed upon, if he finds in it any criticism of the present Board of Bar Examiners. I know with perfect certainty that he feels that they are not to be criticised; that he feels the obligations that the bar of the state is under to them, as much as anybody can, and that one important item in his mind in making this recommendation, which he believed I think to have been substantially agreed upon, was to

relieve the Board instead of imposing further burdens upon it. It is obviously true that if this requirement were enforced the Board would be relieved from the duty of making sixty questions at least for a great flood of young men who are really not entitled to take the examination at all. I think that the recommendation if adopted, would operate to relieve the Board rather than to impose any further burden upon it, and I certainly know that it was not intended as a reflection upon the Board at all. The evil is a very real one. I daresay nearly all of you perhaps have experienced it. I know I did. I had a very marked instance of it once when I was in practice in Chicago. I had a litigious client who came to my office very frequently, and after he had been in and out of the courts for a matter of 2 or 3 years, he came to me one day and requested me to give him a certificate that he had studied law in my office for 2 or 3 years. He was very much surprised and apparently very indignant, but I would not give him the certificate. He said he could get it somewhere, and I noticed shortly afterwards, after I had left the State of Illinois, he was admitted to practice. Somebody did give him a certificate. Now such remarks as these of course do not apply in any very direct way to the lawyers who are here sitting. The lawyers who attend the State Bar Association testify by their attendance to their high ethical standards, and to the interest that they have in raising the character of the profession outside of this Association. But there are outside of this Association lawyers who are very, very careless about those things.

Now Mr. President, with reference to the report of the Committee it seems that the only specific recommendations we have before us are those made by Mr. Wilcox and Mr. Cady. They are very important recommendations, but it seems that they have not been submitted at all, could not under the circumstances be submitted to any other members of the Committee on Legal Education, except the two signing them. It seems to me, the matter not being one of emergency, that it would be a mistake for the Association to pass upon such an important matter without the recommendations made having received the scrutiny and suggestion and possible modification—I am not prepared to say from merely hearing it read, whether it ought to be modified in any respect or not. It would seem to me that the correct disposition to make of the

matter could be to refer it back to the Committee on Legal Education for further consideration, to report at our next meeting, in view of the fact that the Committee are so hopelessly divided on the records before us, and I make such motion.

Motion seconded.

MR. WILCOX: Mr. Hollister has come in during the discussion and has advised me that he is a member of the Committee, and would like to sign the report signed by myself and Mr. Cady, which I read. I want to say in connection with what Prof. Smith has said, that I know from what Dean Richards said at the meeting, that he did not intend to make any criticism of the Bar Examiners; but as Mr. Mason said, the language used in his report was perhaps a little unfortunate. He expressly stated at that time that they were doing an immense amount of work, and very useful high class work for almost no pay at all, and he complimented them very highly at the meeting we had at Madison. I was a little surprised at the way he put it in this report, because it was quite offensive to some of the members who had been on that Board of Bar Examiners. I don't think he intended just what he said perhaps. I felt there was no other way under the circumstances except to read what he offered, and read what the other members offered, and make such report as we could agree on; and I am in accord with the motion made that the whole matter be re-referred with instructions to see if the Committee cannot get together and do a little better job than they have this time.

MR. BROSSARD: In view of the fact that the matter is to be re-referred, I wish to offer one or two remarks. Is it a fact that the moral character of those who have come to the profession by way of the bar examination is any lower or worse than of those coming to the bar through the law school? If it is not, I cannot see any reason for giving ourselves any great concern in regard to that matter. I haven't any prejudice as to the way in which a lawyer comes to the bar. I came both ways. So I am in favor of them both. I went to the law school six months, and then took the bar examination. I think that the community does not suffer so much from beginners as it does from old offenders. (Laughter.) If we are to locate the seat of trouble we had better look to putting

some men out, rather than being so much concerned about boys getting in. The mere fact that none of us admit that anybody has been put out of the profession shows that we have not had the door open so much too wide as many people lead us to think. I haven't lost any of my friends, and have been inside of the profession for something more than 25 years. If there wasn't any great mistake made then, we are not making any great mistake now. The bar examination does not let in so very many. There have been bar examinations held where just one man passed, and as a rule there are not 20% that get past, and there are many more than that that get by through the law school. I think that we should have a standard examination; that either every man who intends the practice of the profession should take that examination, or else that we should pay some attention to other tests. In many other professions we pay attention to degrees received from colleges that are recognized all over the country. I think a person can get upon the faculty of our own university without much reference to whether he has a University of Wisconsin degree. I think many of the faculty there have Harvard degrees, and Yale degrees, and many state degrees, and I think it is only fair to a man who has been to Harvard, who has been to the Minnesota Law School, has been to Ann Arbor and taken a 3-year course in a law school of as high a standard as ours, to admit him upon his diploma. There is no money in running a law school, or in driving all men who want to get into our profession to our State University. Take a law student and it is to our advantage to have him go to these other schools. I think we should have all those who apply for admission to the bar either come in by examination, or by a diploma of a school that is conceded to be the equal of our own law school. That is, if that diploma has a sufficient testimonial of his qualifications, or make them all take the examination. I have been told by members of our Bar Examining Board that a large percentage, I understood them more than half of those who graduated in our law school, could not take the bar examination, which has to be submitted to by those who come through that course. I believe the bar examination should be substantially the same in requirement, that is, that the person who can pass it should be just about on an equal in preparation to practice law as one who comes by way of

diploma from our University. My own opinion is, after having thought the matter over some, and I have some personal interest in the matter and have considered it some on my own individual account, that those who have not the diploma of the State University Law College, or one which is conceded to be its equivalent, should take an examination for admission to the bar, but that examination should be as near as practicable such as would permit that person to receive his diploma from the law school, and if that course is not adopted, then all should be required to take the examination; all from Yale, Harvard, Columbia and Ann Arbor. I say that the bar examination is far harder than it is to take the course at the law school, to get into the profession. I will make an illustration. Three questions were asked at the last bar examination in regard to partnership. I make the prophesy that there is not 25% of the members present here who can answer two out of three of those questions and be certain that he is not guessing at it. Here is one of them. The bar examination was held in January. The Statutes of 1915 were available in January, 1916. I want to just make this remark, as to whether you and I could pass that examination. They got the Statute of 1915 just about the time the examination was held. I think one of the questions was this: "Under the Uniform Partnership Act give four reasons which will dissolve a partnership." Now I venture the assertion not one-half of the members here knew on that day that there was a Uniform Partnership Act in force in Wisconsin. The next one was: "Give four situations or conditions under which a partner, under the Uniform Partnership Act, can convey real estate belonging to the partnership." I think that the members of the Bar Examining Board of the State, with the graduates of the law school or University, many of them, would fail on the examination if you put that examination to them. I don't think we ought to concern ourselves very much about the young men getting into the profession. Supply and demand regulates that thing. Many of the most promising men who get into the profession go into something else because they were not fitted for it. Most of the boys who are trying to study law are good straight fellows, and if we keep them straight after they get into the profession, we need not concern ourselves very much about their morals. (Applause.)

MR. J. B. SANBORN: I have been a member of the Board of Bar Examiners, and a member of the faculty of the law school, and I want to offer one explanation in regard to Mr. Brossard's suggestion as to the parallel situation, and the character of the applicants. The Board of Bar Examiners never see the applicants until the day of the examination, or the 2 and 3 days when they are writing the examination. That is all. They have a feeling I know, all of them, that if they knew something more about these men, had more personal acquaintance with them, they would be able to pass much better upon their qualifications to practice law. The students of the law school are in attendance 3 years at least, of 9 months each, where they are under the observation of the members of the law faculty, and it seems to me the situation is entirely different in the two cases, as to the necessity of getting a line upon their general qualifications in addition to their knowledge of the law.

PRESIDENT HUDNALL: If there is no objection this report will be re-referred to the committee with instructions to report at the next meeting of the Association.

Hearing no objection it is so ordered.

SECRETARY MORTON: Mr. Chairman, I would like to ask how much of this discussion is expected to be published?

PRESIDENT HUDNALL: Unless there is an objection, it will all be published.

The next will be the report of the Committee on Amendment of the Law, Mr. Goggins.

MR. GOGGINS: Mr. President, and Members of the Bar. In view of the lateness of the hour I will make this just as brief as possible. You will remember that at the 1914 session at Green Bay the following resolution, which I will now read, was unanimously adopted:

*"Resolved, That it is disreputable for any lawyer to seek those with claims for personal injuries, or having other causes of action or legal business, in order to secure them as clients or to employ others as agents or runners for like purposes, or to pay or reward directly or indirectly anyone not an active member of the legal profession who brings or influences the bringing of such business to his office or to remunerate policemen, court or prison officials, physicians, hospital attaches or others*



who may succeed in influencing those charged with crime, the injured or others, to seek his professional services, or for any lawyer directly or indirectly to share in the remuneration of any runner, claim adjuster or solicitor of business requiring legal services.

*Resolved, Further,* That it is the duty to the public and to the profession of every member of the bar having knowledge of such practices upon the part of any lawyer, to immediately inform thereof to the end that the offender may be disbarred or otherwise promptly punished

*Resolved,* That a Committee of this Association on Amendment of the Law be instructed to investigate the subject of these resolutions and if in the judgment of such Committee legislation is needed to prevent or penalize the practice to be condemned to formally secure the passage of suitable laws to that end."

The Committee, acting upon that resolution prepared and submitted to the legislature of 1915 a proposed bill covering those propositions. I will read it after a bit. That bill was defeated in the Assembly or, giving you a little more detail concerning it, it was defeated in the Senate. The Senate re-drafted it and it became substitute amendment No. 35 to No. 33S, and was passed on to the Assembly, where it was finally reported out for indefinite postponement. A report upon the matter was made at the last meeting of the Bar Association, which was held at Superior, and it is published commencing on page 21 of the printed report, and I am going to assume that you have all read both the majority and minority reports. Now in that report there was the following recommendation found on page 26 of the printed report:

"Legislation, of this character, much more drastic than that proposed in said 33S, is in force in other states. It is believed that this Association ought not to acquiesce in this temporary defeat, but should continue its labors in this behalf before each succeeding legislature until legislation in substance such as is covered by said 33S is accomplished, and the members of this committee signing this report so recommend."

You will remember, Mr. President, and also the members who were in attendance at that last meeting, that this report

was laid over for consideration at this meeting, and no further action than that was taken thereon at the Superior meeting. Now in connection with that report so laid over, the Committee, or myself for the Committee, have a further report to make. It will be remembered that the report of the Committee to the last meeting of the Association was comprised in three parts, the first part thereof relating to the "ambulance chasing" proposition, commencing pages 21 to 26 inclusive of the printed proceedings of the last meeting, and that consideration thereof was laid over until this meeting. That fact is found on page 52 of the report. At a meeting of the Executive Committee, at which no member of this Committee was present, it was voted that this Committee take such steps as it might see fit to co-operate with the Minnesota Bar Association on the matter of penalizing the ambulance chasing business. Prior to the last meeting of this Association the Minnesota Bar Association had made a report, which I will not read.

Relative to such action of the Executive Committee, the following report is submitted:

#### REPORT OF COMMITTEE ON AMENDMENT OF THE LAW.

"It will be remembered that the Report of this Committee to the last meeting of this Association was comprised in three parts, the first part thereof relating to the "ambulance chasing" proposition, found commencing pages 21-26 of the printed proceedings of the last meeting, and that consideration thereof was laid over until this meeting. (Page 52.)

At a meeting of the Executive Committee, at which no member of this Committee was present, it was voted that this Committee take such steps as it might see fit, to co-operate with the Minnesota Bar Association on the matter of penalizing the ambulance chasing business.

Prior to the last meeting of this Association the Minnesota Bar Association had performed much intelligent labor in this behalf. It, through its committees, had prepared and pressed for passage before the Minnesota Legislature, without success, four separate bills covering various phases of this problem as presented in that state.

Pursuant to said authority of the Executive Committee, as so conferred upon this Committee, a joint meeting of the Minnesota Committee and this Committee was arranged for and held April 7th, 1916, at the office of Hon. Stiles W. Burr, President of the Minnesota Bar Association, at his office in the City of St. Paul, Minnesota, at which were present, besides President Burr, 7 of the 9 members of the Minnesota Committee, and the Chairman of your Committee.

The meeting was arranged on quite short notice and it so turned out that other members of your Committee and your President could not be present.

After extended discussion it was agreed that the joint Committee should, for the present at least, confine itself to the consideration of the following subjects:

1. Legislation prohibiting solicitation of legal business.
2. Legislation making contracts for fees for legal services subject to regulation and control by the courts.
3. Legislation prohibiting actions in the courts of Minnesota between non-residents of the state on tort claims arising out of the state.
4. Legislation regulating settlements of claims for personal injuries made within a limited time after the injury.

All were agreed that the ambulance chasing business is a serious evil requiring speedy correction, but as to the methods to be employed there was quite a division of opinion.

Some were inclined to go no further for the present than to recommend

'legislation prohibiting solicitation of legal business through paid agencies, such as runners, solicitors and the like or by written or printed circulars, pamphlets or other advertising except the usual and customary advertising by professional cards and prohibiting the farming out of legal business for profit and upon any arrangement for the division of fees or the like.'

Others thought that attorneys at law ought to be included as well

'believing that all solicitation of legal business of every kind should be made illegal.'

Still others were of the opinion

'That the abuses under consideration could best be done away with by a provision for the regulation by the Court of contracts for fees for legal services.' "

Mr. Goggins digressing from the report, said:

One very strong member of the Minnesota committee said, that of all the easy cases to try, the easiest is a personal injury case. Being an ex-judge of the Supreme Court of the State of Minnesota, a man in the prime of life, and having tried many cases on both sides of the proposition, by that I mean for the plaintiff and also for the defendant in personal injury cases, he said the easiest money earned by a lawyer is the prosecution of plaintiff's cases in personal injury claims, and he said that the ambulance chasing evil in his judgment could be best corrected by leaving the matter of fees, by legislation, entirely to the Court trying the action. There was no other member present that agreed with him on that proposition. I will not tire you or take your time to enumerate the reasons that were given, but the important one was this: that presiding judges very much differ upon what is competent pay for legal services. Some would be very niggardly regarding allowances, others would be very generous, and particularly in cities where a number of common law judges sit in the trial of such propositions there would be here a judge that would act in the one way, and there a judge that would act in the other, and the result would be confusion and turmoil, and probably very many affidavits of prejudice filed, and efforts outside of that to get these cases before the judge who would be most liberal in the allowance of pay, or to get it away from such a judge as the particular interest represented and acting might feel.

Continues reading of report.

"Relative to Number 3 (imported litigation), the Chairman of your Committee expressed the opinion that we in Wisconsin are not sufferers from any such evil. In Minnesota the courts are seriously burdened with this class of litigation.

Relative thereto, members may be interested in reading

Johnson vs. Ry. Co., (Minn.); 151 N. W., 125.

Eingarter vs. Ill. Steel Co., 94 Wis., 70.

Fond du Lac vs. Henningsen P. Co., 141 Wis., 70."

Mr. Goggins, again digressing, said:

I want to say a word or two in application to that, that is

not contained in the written report. It amounts to this: Those who practice in the Minnesota courts that are present here, know that the courts there sustain much greater verdicts, greater in amount, than they do here. A case for instance here where the Court would question damages say of \$10,000, would in Minnesota carry \$25,000 in all probability before a Court would interfere; and the result of it is that the Courts there are very much resorted to on that account, because of the greater size of the verdict that may be expected from juries there, for the juries have fallen into the practice of allowing very large verdicts in that state. The result of the whole matter is that the Courts are very much burdened in that state with that class of work, resulting in great expense to the people in that state. I ought to add that one or two of the district judges there took the bull by the horns, so to speak, and held that they could deny jurisdiction in such cases, but the Supreme Court of the state reversed the holding of the lower court.

Continues reading of report.

"There was substantial agreement that there should be some legislation relative to making void compromise settlements of claims for personal injuries made within a very limited time after injury; the majority being in favor of such invalidity at the election of the injured person unless the agreement for settlement was submitted to and approved by a judge of the District Court.

Upon all these subjects it was agreed that there should be prepared drafts of bills in time for submission to another meeting of the Joint Committee in time for action and report to the next meetings of the Minnesota and Wisconsin Bar Associations.

The Minnesota Bar Association meets commencing August 8th, 1916.

Relative to the subject of making the solicitation of all legal business of every kind, by anybody illegal, the Chairman of your Committee was requested to prepare a draft of a bill which should include a section exempting or

'excluding the business of handling and collecting commercial accounts and proceedings incidental thereto under established and customary methods.'

On this, therefore, the Chairman of this Committee availed

himself of the work already done by the Committee and submitted draft of a bill exactly as found commencing on page 22 of the printed report of the proceedings of the last meeting, except that a paragraph is added thereto as follows:

‘(5) Nothing in this act shall apply to bona fide collection agencies and claim forwarders under established and customary methods.’ ”

Mr. Goggins, again digressing, said:

Now here is the appropriate place for reading the bill as it was drafted and reported to the last meeting of this Association.

MR. BENTLEY: Is that the bill you proposed to the last legislature?

MR. GOGGINS: Yes. (Reading.)

“Section 1. There is added to the statutes a new section to read Section 4504m (1). No attorney-at-law shall, either directly or indirectly, either before or after action brought, promise or give any valuable consideration to any person as an inducement to place, or in consideration of having placed in the hands of himself or others any business requiring professional services as an attorney-at-law, nor receive or accept any compensation for such professional services from anyone other than the person or persons interested directly or by right of representation or who, out of charity and compassion, maintains or assists in maintaining the claim or defense of such person because he is near of kin to or a servant or poor neighbor of such person.

(2) No attorney-at-law shall, directly or indirectly, divide or share with any persons not admitted to practice law, any fee, emolument or compensation of any kind or nature received for professional services; nor shall any claim adjuster or solicitor of business, policeman, court or prison official, sheriff, physician, hospital attache, or any other person, pay or offer to pay directly or indirectly, to any attorney-at-law, or receive or solicit anything of value from an person whomsoever as a consideration for placing or influencing another to place in the hands of an attorney-at-law any business requiring the professional services of such

attorney-at-law or of employing or influencing the employment of an attorney-at-law for such business.

(3) No person, whether admitted to the bar, or otherwise, shall solicit or seek in any manner, directly or indirectly, from any person or persons, or corporation, any employment of any kind, for himself or for others, to be performed in reference to, or in connection with the making, presenting or investigation of any alleged claim, debt, cause of action or demand, of any nature, or in connection with, or in relation to any real, or alleged or possible defense of any sort, or in reference to, or in connection with the making, presentment, investigation or prosecution of any action or proceeding of any nature, which is pending, or may be the subject of controversy in any court, no matter where situated, or in connection with the making or investigation or assertion of any defense of any such action, or proceeding, which is pending or may be the subject of controversy in any court, no matter where situated."

(4) Every person convicted of a violation of any of the provisions of this section shall be punished by imprisonment in the state prison or in the county jail not more than one year, or by a fine of not more than Five Hundred Dollars, nor less than One Hundred Dollars, or by both such fine and imprisonment. In addition, any person admitted to practice law in this state may on first conviction be suspended from practice for a period of not less than one year nor more than three years, and a second such conviction shall operate as an annulment of his license to appear as an attorney or counsellor at law in any court of this state.

Section 2. This act takes effect when published."

Concludes with Report as follows:

"May 18th, 1916, this draft was submitted to the President of the Minnesota Association and also the members of this Committee. It has the approval of the Chairman, Judges Fowler and Reid, Ralph E. Smith, and, I think, J. F. Martin. It has the disapproval of Mr. Corrigan as to said paragraph "(3)", and the approval of Mr. Sanborn except that he is not satisfied that the wording of said paragraph "(3)" is clear.

The other members of the Committee have not expressed themselves.

As yet no drafts of bills have been received from the Minnesota Committee.

The Chairman of this Committee therefore prepared and submitted to the president of the Minnesota Bar Association and the other members of this Committee a proposed amendment to Sec. 4079m covering the subject of early compromise settlements in personal injury cases, which Section when so amended would read as follows:

"Section 4079m. In civil actions for damages caused by personal injury, no settlement made or writing signed by the injured party within seventy-two hours of the time the injury happened or accident occurred, shall be used in evidence against the party making or signing the same unless such evidence would be admissible as part of the *res gestae*. And no settlement for any claim of damages caused by personal injury made with the person injured within six months from the date of such injury shall, if rescinded by such injured person by notice in writing served within six months from the date of such settlement, be valid and binding on such injured person unless two of his adult friends selected by him and who are not agents of the one against whom such damages are claimed, shall, at or prior to the time of such settlement, certify in writing that they have personally investigated the facts, counseled with said injured person and considered his claim for not less than five days, and that they believe said proposed settlement to be fair and just; but any amount paid on settlements made otherwise than as herein provided shall be offset against such damages as such injured person may recover in an action at law."

This has the approval of Judge Reid, J. F. Martin and the Chairman of this Committee. From the other members of the Committee there have been no expressions of opinion.

It is respectfully submitted to you for your consideration.

The reasons for suggesting such settlement instead of a judicial settlement are in substance as follows:

In judicial settlement, if it amounts to anything, there must be notice, attorneys, some witnesses—all requiring time and expense. Besides, judicial settlement involves a very radical



change in the law, as it now stands, and this with said other considerations are sure to arouse most serious opposition likely to end in defeat.

The object of any such legislation should be to protect the injured person from hasty and inconsiderate settlement, and particularly the one who is in no physical or mental condition to act intelligently or prudently on his own account. Most injuries are of a trivial class where little or no physical or mental depression follows and where recoveries are quick. There also seems to be a custom adhered to by both employer and employee, requiring settlement for personal injuries before resumption of work. It is not material now to inquire who is responsible for that custom. In cases where the injury is not serious, it would not seem advisable to put the parties to the trouble, expense and delay of a judicial settlement; and the public should not be made responsible for such expense. As the statute now stands, the injured person is protected against early admissions, and it would seem that sanction of settlement by friends of his choice will protect him from imposition. If there are evils in this respect requiring legislation for their correction, such amendment to said Section 4079m ought to be given a trial. It probably could be passed and would seem almost sure to correct any evils that may now exist in this behalf.

Six months may be considered too long a period. That time limit is not essential to the plan.

The friends so selected should not be agents of the employer, but the injured person ought to have the privilege of making his selection from his co-employees. It might be decided to his advantage to do so.

"Adult friends" are named instead of "friends of mature judgment" because the latter expression might furnish many disputes and much litigation. It might be better even to use "persons" instead of "friends."

Lack of time prevented submission of this Report, as finally prepared, to each member of the Committee.

It is therefore signed by the Chairman alone.

Respectfully submitted,

B. R. GOGGINS,  
Chairman."

MR. GOGGINS: Now as I have already said, that report was sent on to the President of the Minnesota Bar Association, and at the meeting that I have referred to, the majority of that Minnesota committee was then in favor of a settlement sanctioned by a district judge. Since I have been here, in fact, last evening, I received a letter from President Burr in which he said that at a recent meeting of their committee they had the matter up for very serious consideration. He was then leaving for Duluth, and directed his stenographer to send copies of the bills prepared, and she adds a note that she was unable to find the others but sends a draft of the bill as prepared by that committee upon this last proposition of early settlements in personal injury cases, and it is worthy of consideration. It virtually adopts the plan that the reporting members of your committee recommend, but puts it in a different way, and it may be a better way. The Minnesota committee objects that the time limited in the bill as drafted by me is too long, so they have it in this form:

"Any release or settlement of a claim for damages arising out of any personal injury wholly disabling the injured person from following his usual occupation for a period of more than ten days, or arising out of death by wrongful act, made within 30 days after the injury or death, may be avoided within 6 months by the commencement of an action for such damages. Any money, or the value of any consideration paid for such release need not be returned, but shall apply as a payment upon any judgment recovered therein. Upon the trial of any such action no reference to such avoided release shall be made in the presence of the jury."

Now, Mr. President, of course our report as now presented is divided into two parts. The first is the recommendation of the continuance of the work of the committee before the Wisconsin legislature further as presented at the 1915 meeting. That ought, of course, to be acted upon separately. The second is without reference to the proposition of early settlements in personal injury cases. You have already observed that that does not come from this body directly. It was a matter that was submitted by the executive committee to this Committee on Amendment of the Law, and following the recommendation of that committee we of this committee now

submit to you for your consideration the result of our labors upon that proposition.

MR. CORRIGAN: Mr. Chairman, I desire to be heard very briefly with respect to this report. The majority of the committee one year ago and now seem to think that these subjects of proposed legislation are separate and distinct from each other. I think that they are germane to each other and that the two together should form a part of one bill. I thought so one year ago, and therefore, my dissenting report which is published as I see, in the published volume of the proceedings of one year ago, immediately following the majority report with respect to subdivision 1, which is the question now being considered. In respect to that subject I have addressed myself on two different occasions at some length, and as you gentlemen have had a copy of the report of the proceedings of one year ago, I will assume that those who care to read what the committee did, or what the minority did, have read it, and it would therefore be a mere loss of time for me to read it over again. In addition to that, I expressed myself upon this question at some greater length before the Milwaukee Bar Association last December, in an address which covered that subject among others, and a copy of which I sent to each lawyer in the state of Wisconsin, and I will assume that those who cared to read that at all have already read it.

In brief, Mr. President, and Gentlemen of the Bar, I am in favor of legislation which will cover both subjects mentioned by Mr. Goggins, as chairman, in one bill. I differ with Mr. Goggins as to what the character of the second portion of the bill should be, that is to say, with respect to settlements of personal injury cases, and I think I am in favor, as I understand Mr. Goggins' position from time to time during the year, of a bill that will be somewhat more comprehensive with respect to the solicitation of law business; but there is not any very great difference between us upon that phase of the matter. As a part of the dissenting report of a year ago, and of the address which I delivered in Milwaukee, I presented a bill, not with the idea that it should be final, and that there could not be any compromise or anything of that sort, but with a view of presenting the whole matter comprehensively to the bar of Wisconsin. Without reading that bill, because those who have desired to read it no doubt have already,

it was a bill which I advocated before the committee of the legislature at the time our Committee appeared there to discuss it, and one which had the support of Ex-President Doerfler at that time, before the committee of the legislature. I was in favor of making the solicitation of law business by anyone, whether he be a lawyer or a layman, or whether it be a corporation or a collection agency, or a trust company, or whatever it might be, a crime to be punished severely, and I favored that for the reason that if the solicitation of one kind of law business is wrong, then the solicitation of any other kind of law business is wrong, and I based my argument upon the principle of the common law that to stir up strife is a dangerous engine of oppression and is primarily wrong, and that if it is wrong to solicit a case that involves \$10,000.00 it is wrong for someone else to solicit a case that involves ten cents, because it is the same principle; and if it is wrong for men to solicit personal injury business, as it is, whether they are laymen or lawyers, it is wrong for men who are engaged in the bankruptcy business to solicit three or four claims and throw someone into the bankruptcy courts by that means. (Applause) If it is wrong for a man to solicit a personal injury case, it is wrong for a trust company to advertise in the street cars of our metropolitan centers, and the newspapers that are distributed throughout the state and throughout the country, for the purpose of obtaining the drawing of wills of individuals, and for the purpose of gaining control of trust estates and for the purpose of foreclosing mortgages. So the bill which I proposed was directed not only against the lawyers of Wisconsin, but was also directed against foreign lawyers. As a matter of fact, Gentlemen, there is not very much solicitation of any kind of law business by lawyers in Wisconsin. Most of the solicitation by lawyers comes from outside of the state of Wisconsin, and by the trust companies and collection agencies, and things of that character, within which there may be lawyers on the board of directors, but if so, they are hiding behind. But it is fair to the majority of the committee to say that they differed from the committee of the legislature and were in favor of cutting out the solicitation by foreign lawyers nearly as strong as I was myself. This bill however, was directed against laymen as well, and against corporations, so that, so far as I was able

to find, everyone was included, and it was made a crime for anyone to solicit law business of any kind whatsoever. I do not care, so far as I am concerned, whether it is a collection agency, or a bankruptcy firm, or a trust company, or whatever it is. If it is wrong, it is wrong for all, and it is, and the common law says so in plain language. Now there are two phases of ambulance chasing. Sometimes the word ambulance chasing may be used as to any kind of law business, but strictly speaking, as applied to the personal injury business, at which it is generally levelled, there are two kinds of it. There are two different classes of individuals that are engaged in it. One set is engaged in running after the claimant to get his case for the plaintiff, and the other set is the other crowd that is running after him for the purpose of getting a release at a nominal sum, and a statement which it hopes will defeat him in court when his case is finally tried. I am against both of them, and in this bill, which I believe is germane to this general subject of ambulance chasing, and the solicitation of law business, and particularly germane to the subject of ambulance chasing, I was in favor of having the weak, who are sometimes intruded upon, and whose rights are subverted by those who chase the ambulance in behalf of defendants, surrounded by the protecting arm of a court of justice.

In other words, to be brief, I am in favor of putting the arm of the court around him just the same as it is around a minor, so that the case cannot be settled, especially when there is no lawyer representing the claimant, except it be done in court where he has a right to be heard, and the court has the right and the duty to inquire with respect to the nature and terms of the settlement. Otherwise let him who seeks the settlement so strenuously run his chances on whether that settlement is final. Where a lawyer represents the claimant it is all right, because then adversaries are dealing with each other who are equal. Furthermore, I am in favor of additional legislation with respect to the effects of settlements so far as they are taken from the claimant in personal injury cases, and that I have set out. Now I see that the report that Mr. Goggins has made suggests in the place of this court settlement program which I was in favor of, a somewhat different way of meeting the situation, which it seems the gentlemen in Minnesota are talking of as well. It strikes me that all of the

argument that has been made against the court settlement as to its being difficult, and bringing about difficulties with respect to the time of the court and the inconvenience of those who desire to settle, and the like of that, may be equally urged against the idea of having two adult friends, because it seems to me that leaves open the question of fact for litigation in the courts, as to whether the two fellows selected were really friends or enemies. I can see that some nice questions of fact might be raised in litigations of this kind. I want to go just as far as any man who ever thought on this subject with respect to the solicitation of law business by anybody, but when it comes to ambulance chasing, I want to see legislation passed which will take in both sides of it, and that will take both horses out of the race, and close up the pool rooms, and until you do that, and until you go before the legislature, and those who are in the habit of representing plaintiffs and those who are in the habit of representing defendants, can stand together and go before the legislature with a comprehensive program that will clean out ambulance chasing on both sides, you cannot hope to secure any results before the legislature. But when you do go there as lawyers, with a comprehensive program that will clean up ambulance chasing on both sides, then you can get a hearing. They will see that you are in good faith, and you will get something through that will wipe out the evils which have grown up out of this business.

MR. GOGGINS: Mr. Chairman, I wanted to say a further word in explanation, and make a report before the discussion is taken up by the other members, because I would like to have them understand the differences between the minority and the majority report.

THE PRESIDENT: If there is no objection we will hear from Mr. Goggins further. Not hearing any objection, we will proceed.

MR. GOGGINS: I am going to read one paragraph from the majority report on page 23. The inclusion in the bill of these provisions that were suggested in the minority report, or any like provisions, was opposed by the Chairman and other members of your Committee who took part in the proceedings, and by your President, upon grounds that they are not within the submission covered by said resolution, are not really germane thereto, and if meritorious, should be the subject of a separate

bill by way of amendment or addition to Section 4079m, or by a separate and independent section of the statutes; that they cover propositions not considered, debated or voted upon by this Association, and matters upon which there is a great diversity of opinion among members of the Bar as to both the merits and policy thereof, and which would precipitate a fight in the legislature, sure to end in defeat of said bill conceded to be timely and meritorious.

*Now I move*, if I have not already done so, the adoption of the recommendation upon the report that was submitted to the last meeting, so that there may be something before the House. This report was signed by the Chairman, B. R. Goggin, Judge Reid, John B. Sanborn, Judge Fowler, John F. Martin, R. A. Smith, and has the approval of President Doerfler, who put in a great deal of time before the Legislature, upon the proposition.

Motion seconded.

MR. CORRIGAN: Mr. President, I desire to move a substitution of the minority report for the majority.

Motion seconded.

THE PRESIDENT: I was just going to say, I do not think it is in order. That would amount to an amendment to an amendment.

MR. MORTON: I believe it should be referred back to this Committee upon laws, and that they should be instructed to re-draft a bill which then should be presented to this Association, sent out in pamphlet form to the members of the Association, the expense of it to be borne by the Association, and then if any member of the Association has any objection to the bill so drafted, that he should make his objection to the Chairman of the Committee instead of to the legislature. Then if there is any objection or amendment to be made that the Committee can get together and make the amendment, and then agree that a bill shall be presented that everybody has agreed upon, and then when that is done I think it will become a law.

MR. SCHMITZ: Will you make a motion to that effect?

MR. MORTON: I will, yes.

THE PRESIDENT: It will be out of order. There is a motion pending.

MR. BENTLEY: Mr. Chairman, as I understand this bill, it is comprehensive enough to include a great deal of what we

want, if not everything that we want, and it is the best thing that we can get according to the Committee's report. I am heartily in favor of the bill as reported by the majority of the Committee, taking what we can get at this time, putting our shoulder to the wheel for what we can get hereafter, and everyone of us standing back of the bill as we present it.

MR. GOGGINS: Mr. Chairman, if I may say a word in behalf of the bill, if the rest of the men are done. I want to agree with Mr. Schmitz on just one proposition, that ex-railroad employees and some ex-railroad attorneys are just as great offenders, from our experience, as any other members of the profession; and when I say that I do not refer to any particular person here. We are not troubled up in the country very much from this evil. The only place that we run up against that proposition up in the country is when somebody from Milwaukee, or some ambulance chaser from Minneapolis or St. Paul runs down in our territory just as soon as the papers announce that somebody has been injured or is supposed to have been injured. My partner, Mr. Brazeau, a short time before the last meeting happened to be in a little railroad accident. It was reported in the papers that T. W. Brazeau was in that accident. The second morning after that the ambulance chasers were after Mr. Brazeau. There was not a railroad representative in that bunch. I do not think that any charge that the members of this Committee—I mean those signing the majority report—are acting in the interests of any corporation or any particular person, can be well founded. I want to say this duty was imposed upon this Committee by that resolution. This Committee, at its own expense, at the expenditure of a great deal of its own time in the drafting of this measure, in appearances before the legislature—and they find no fault with that expense from which they never expect any return, and would not take it if it was offered, either as to money expended or as to time—have conscientiously carried out the mandate of this Association in the preparation of the bill for its presentation to the legislature, it was a single issue, it is a worthy object, covers a worthy purpose and I want for one, and I think I speak for the Committee, for this Association as now here assembled, to meet the issue squarely; either adopt the recommendation of the majority of this Committee or adopt the recommendation



of the minority, just as called for in that amendment. We will know where we stand. I know that the more you tack onto that bill the more you are going to endanger its passage, and as Mr. Morton well said, it covers a subject upon which we are all agreed, and let us put it through.

I want to say upon the second part of this report, with reference to early settlements, I stand just as strongly in favor of that proposition, something suitable, as suitable, as either Mr. Schmitz or Mr. Corrigan or any member of the Association, who cheered their speakers upon that proposition. I stand just as much in favor of that, but I know, and the majority members of this Committee know that if you tack those two propositions together and go before the legislature, you are not going to get anything.

MR. SANBORN: As another member of the Committee, I want to endorse what Mr. Goggins has said as to the other proposition, when it is dealt with separately. I was not able to agree entirely with all the provisions of his proposed bill, but I will support and expect to support something along the line but I think that it is fatal, or probably will be fatal to put them in together under the present circumstances.

THE PRESIDENT: The question is, will you substitute the minority report for the majority report? All those in favor of the substitution will say "aye"; opposed "no". The Chair is in doubt. Those in favor of the motion to substitute the minority report for the majority report will please rise and be counted by the secretary.

SECRETARY: 16.

PRESIDENT: Those against the motion, rise.

SECRETARY: 34.

PRESIDENT: The motion is lost. Now the question is upon the original motion, the adoption of the majority report.

MR. SHELDON: In order to get the matter before the Association I move you that the motion to adopt the majority report be laid upon the table.

Motion seconded.

THE PRESIDENT: Those in favor of the motion to lay upon the table, please rise. 34. Those against the motion, rise. 24. The motion to lay upon the table is carried.

MR. MORTON: I renew my motion, Mr. President.

MR. McMAHON: I second the motion of Mr. Morton.

MR. MORTON: I will again state the substance of it, Mr. President, but I want the motion to stand as I made it. The substance of it was that this whole matter be referred back to the Committee, with instructions to draft a new bill, or propose a new bill, and this bill to be sent by mail to the members of this Association for consideration, and that any member of the Association having objections to the bill so drawn, make such objection known to the Chairman of the Committee, and that then the Committee act upon the information then had, and present a bill such as they draft, to the legislature, embodying both or one of these matters.

MR. GOGGINS: Mr. Chairman, I rise to a point of order. The bill, the subject matter thereof, is now on the table, and I do not think we can deal with it until it has been taken from the table.

THE PRESIDENT: I think the point of order is well taken, and I so rule.

MR. MARTIN: Mr. Chairman, there is no objection to offering a new motion on the subject that I can see, incorporating the idea suggested by Mr. Morton. I offer it as an original motion here.

THE PRESIDENT: Having laid the motion to adopt the majority report upon the table, doesn't it carry the whole question with it?

MR. MARTIN: I don't think so.

THE PRESIDENT: I am inclined to think it does. There are two ways of getting at this. You can take the Committee's report from the table, or you can give the Committee any instructions of course, that you desire.

MR. MARTIN: I take it that is the sense of Mr. Morton's suggestion, that the new bill be made as comprehensive as it has been suggested here.

MR. MORTON: Certainly.

MR. MARTIN: Necessary to cover both sides of the question.

MR. FAIRCHILD: He said one or both.

MR. MORTON: One or both.

MR. MARTIN: Both. I should leave to the discretion of the Committee whether one bill or two.

THE PRESIDENT: I don't want to argue this question, but it seems to me that we will get the Committee right back where they are now.

MR. GOGGIN: I rise to the same point of order, and I want to say in connection with that that this report of the Committee is in two parts. We were acting on one. We cannot act intelligently on Mr. Martin's or Mr. Morton's suggestion until we vote upon the other proposition. I think we are out of order.

THE PRESIDENT: I think so myself.

MR. GOGGINS: Mr. Chairman, I move that the recommendation of the Committee, so far as agreed to by the Committee, its 3 members, for amendment of section 4079m, be adopted.

Motion seconded.

MR. SCHMITZ: I don't know what that is. I don't suppose anybody does.

MR. GOGGINS: I will read it through quickly, because it is getting near banquet time.

"Section 4079m. In civil actions for damages caused by personal injury, no settlement made or writing signed by the injured party within 72 hours of the time the injury happened or accident occurred, shall be used in evidence against the party making or signing the same, unless such evidence would be admissible as part of the *res gestae*."

That is the statute as it now stands. The proposed amendment adds to it the following:

"And no settlement of any claim for damages caused by personal injury, made with the person injured within 6 months from the date of such injury shall, if rescinded by such injured person by notice in writing served within six months from the date of such settlement, be valid and binding on such injured person unless two adult persons selected by him and who are not agents of the one against whom such damages are claimed, shall, at or prior to the time of such settlement certify in writing that they have personally investigated the facts, counseled with such injured person and considered his claim for not less than 5 days, and that they believed said proposed settlement to be fair and just. But any amount paid on settlements made otherwise than as herein provided shall be offset against such damages as such injured person may recover in an action at law."

MR. MARTIN: That is the part of the report that has not been acted upon.

**MR. GOGGINS:** That has not been acted upon and has no relation to the other. That is a separate proposition, and the members signing this report, recommend the adoption of some such amendment in substance. I read to you a different kind of a draft implying the same idea adopted by the Minnesota committee, which I said, may have some features that are an improvement upon this. I have moved the adoption of that part of the report of this committee, and it has been seconded. It may be that I ought to read the Minnesota draft for information, and preliminary to that I want to say that the members of the Committee having anything to do with the draft of that form that I suggested have no pride of detail. As far as we are concerned we are just as willing that this form should be adopted as anybody, except that it ought to come as an addition by way of amendment to said section 4079m.

"Any release or settlement of a claim for damages arising out of any personal injury wholly disabling the injured person from following his usual occupation for a period of more than ten days, or arising out of death by wrongful act made within 30 days after the injury or death, may be avoided within six months by the commencement of an action for such damages. Any money or the value of any consideration paid for such release need not be returned but shall apply as a payment upon any judgment recovered therein. Upon the trial of any such action no reference to such avoided release shall be made in the presence of the jury."

You will observe, Gentlemen of the Bar, that the distinction or the difference between the two is just this: There is no intervention here at all provided for by any friend or person in the way of a settlement. In the plan that I submitted there was such intervention, and as I said in my opening that feature did not recommend itself to the Minnesota Bar. They believed the time too long, and believed that the time should be shortened as provided here, and leave the matter of repudiation to the injured person as an absolute right.

**MR. MARTIN:** May I ask, did the Committee consider how far you can go in restricting the right of the party who is injured, in making a contract?

**MR. GOGGINS:** Of course you and I both know that for

fraud and unfair treatment of the injured person the courts very readily now set aside those settlements, and you and I have both been in litigation where that has occurred. You and I have been connected with cases of that kind, so we know what that is now. But as to the constitutionality of the matter I have not investigated it very closely, but the gentlemen of the Minnesota committee had gone into this matter twice. They have been before the legislature twice, as I now remember it. They went before the legislature in that connection, with a kind of a combination bill to start with, and of course they got swamped, just as we argue here that you will. Then they separated their various propositions into four. They got more consideration in that way, by taking one thing at a time. They had a better chance for achieving some fair result in the end than they had by combining everything. These gentlemen say they have investigated from the standpoint of the authorities generally, and that that kind of settlement is proper because it comes primarily within the police power of the state to protect its citizens under such circumstances that it can reasonably be said that he is not or could not be expected to properly take care of his own rights.

MR. SANBORN: I agreed to the report before taking any action upon this portion of it. Personally I prefer the substitute of the Minnesota committee, and would like to endorse that instead of the plan proposed.

MR. GOGGINS: Let me, with the consent of my second, modify my motion so as to include a recommendation of the Committee that the Minnesota draft of the bill be adopted, discretion being given the Committee to re-draft the measure, covering the general plan covered by both proposed bills.

MR. CORRIGAN: Then I move to amend the motion, Mr. President, and that this Association direct the Committee on amendment of law to draft a measure which will present to the legislature the question of passing a law that will regulate all settlements excepting where there is an attorney, by placing the matter before a court of record in the jurisdiction where the claimant resides.

MR. GOGGINS: Mr. President, I rise to a point of order upon that proposition. It is covered by what you have already ruled before.

THE PRESIDENT: That motion was not seconded.

MR. DOERFLER: I second Mr. Corrigan's motion.

THE PRESIDENT: Mr. Corrigan's motion is that in lieu of the friend settlement and the Minnesota settlement, that all settlements be submitted to the court before they become valid excepting where there is an attorney. I don't think I have ruled on that. I think that is germane.

MR. GOGGINS: In one sense I think in substance you have. Of course in the sense that the minority report is broad enough to cover about everything that you can think of that pertains to tort law, of course in that sense I think it ought to be ruled out.

THE PRESIDENT: I will hold Mr. Corrigan's amendment in order. The question is upon that.

MR. MORTON: Mr. President, I desire to say one word. That was one of the chief objections that was made by the railroad attorneys to the legislation that was proposed, and it was one of the strongest objections; the idea of trying to put up to the court the matter of settlement every time a small injury occurred.

THE PRESIDENT: The question is upon the amendment; those in favor of the amendment say "aye"; those opposed "no". The noes appear to have it, the noes have it and the motion to amend is lost. Now the question is upon the original motion. Those in favor of the original motion, say "aye", those opposed "no". The ayes have it. The original motion is carried.

MR. SMITH: Mr. President, as the matter now stands before the Association then, the Association has approved the report of the Committee against settlements. It has laid upon the table the report of the Committee, or rather, its recommendation against ambulance chasing. It seems to me that would be a very undesirable shape in which to leave the matter before the people of the state and the bar of the United States. Having disposed of this second matter of settlement in a manner which seems to be very satisfactory to all of us, can we not now, without any particular controversy take the other matter from the table, and pass that. I move you that the matter laid upon the table, the first recommendation of the Committee, be taken from the table and put upon its passage.

Motion seconded.

THE PRESIDENT: The question is, shall the motion at this time be taken from the table. Those in favor of taking the motion from the table will say "aye"; those opposed "no"; the ayes appear to have it, the ayes have it, and the motion is taken from the table.

MR. MORTON: Mr. President, I wish to renew my motion which I made in respect to referring the matter back to the Committee.

MR. McMAHON: I second the motion.

THE PRESIDENT: The question is now of referring both matters, the Association having gone on record in favor of ambulance chasing from both directions—I take it that that entire matter is to be referred back to the Committee.

MR. MARTIN: With instructions, I understand, to report and urge the passage of the bill.

THE PRESIDENT: The bill covered both sides.

MR. MARTIN: I think that ought to be left to the discretion of the Committee that is handling it, to see what the situation is, and what the objections may be.

THE PRESIDENT: The Committee is hopelessly divided right on that one proposition. If we refer it back to the Committee won't they be in the same position?

MR. BROSSARD: I move to amend that by instructing the Committee to make but one report, and that to be the majority report.

MR. SCHMITZ: It seems to me after this discussion we have had here, that if this matter is referred back to the Committee without saying anything as to whether it shall be one, both, or two, that the Committee will find a way out by presenting a bill that will be acceptable. I think as the matter stands, that it is the feeling and judgment of the members of the bar who are present here, and I would like to see it re-referred, and I would like to see it in one bill. I believe one bill will pass just as well as two.

MR. GOGGINS: So that the matter in issue now may be brought precisely to the attention of the Bar so they can vote intelligently upon the proposition, I want to read the recommendation of the Committee. That is what is embodied in this report.

"It is believed that this Association ought not to acquiesce

in this temporary defeat, but should continue its labors in this behalf before each succeeding legislature until legislation in substance as is covered by said 33S is accomplished."

I want to make this suggestion to those who have been differing with us on this matter. This does not confine us to any particular form of bill. The idea is to prohibit ambulance chasing. We have now in a separate motion taken care of propositions embodied in section 4079m. We have accomplished that. What these gentlemen ought to do who are opposed to us—they are just as forceful and just as effective, and Mr. Timlin (Junior) is as willing to assume responsibility for that as anybody on our side so far as effectiveness before the legislature is concerned—is to support this motion now and join with the Committee in presenting a form of bill that will cover what we all acknowledge should be accomplished by this resolution. If you do that, that is all right. If this Association is not prepared to take up seriously that question of ambulance chasing, let it lay there for a year, but I believe if you take it now and deal with it in the way I suggest, it will pass.

MR. MARTIN: I understand that is the spirit of this resolution.

MR. CORRIGAN: May I ask you a question, Mr. Goggins? I just do it because I want to know what your position is. So you mean by that that the Committee should take up both phases of ambulance chasing?

MR. GOGGINS: Yes, if I understand you right.

MR. CORRIGAN: Both sides of it.

MR. GOGGINS: I mean, that there be no ambulance chasing after plaintiffs in personal injury cases. I mean that there shall be no ambulance chasing by what these gentlemen have referred to as these corporations that you have referred to as sending out to draw wills, and probate estates, and everything of that kind. I said at the start, that we in the country are not bothered with that proposition. That is a proposition you are dealing with in the city of Milwaukee. But as you present the matter, why I don't believe in the formation of corporations to practice law, or that the attorneys they are paying \$50. to \$100. a month to for the probating of wills, etc., and taking that business out of what I call, the legitimate practice of an attorney, which he has a



right to expect in his business. I for one, and I think the majority of the Committee will join in the proposition, believe that the bill should be redrafted to cover just that kind of business, if it does not do so now.

JUDGE FOWLER: Mr. Corrigan wants to know if you take up the proposition of ambulance chasing by defendants?

MR. GOGGINS: Yes, I understand it does that. The question of settlement is taken care of. It don't make any difference how much a railroad company or insurance company goes to visit these people, if we can succeed in putting through that legislation, amending 4079m, they have wasted their time.

MR. MORTON: I would like to ask if you would be willing to incorporate in your motion the recommendation as to your Committee publishing what you do, and sending it to the members.

MR. GOGGINS: I move that the recommendation of this Committee be adopted as contained in its recommendation on page 26 of the printed proceedings, and that such redraft of this measure as may be prepared by the Committee be printed and circulated among the members of this Association at a sufficient time before presentation to the legislature so that any person or member of this organization desiring to be heard thereon, may have that opportunity.

MR. MARTIN: I suggest you add further that having heard from the members of the Association, the Committee be charged with presenting a bill there and pushing for its passage.

MR. GOGGINS: I adopt that as part of the motion.

THE PRESIDENT: You move that as a substitute. Does the substitute meet with your approval, Mr. Morton?

MR. MORTON: Yes, absolutely.

THE PRESIDENT: Then we will consider that the original motion. Those in favor of the motion manifest it by saying "aye". The motion prevails.

MR. MORTON: I wish in order to complete this matter, to make a motion that any action taken by a majority of the Committee on amendment of the laws in this matter, be assumed as the action of this Association, and that they approve it, so that they will have a standing before the legislature.

Motion seconded.

MR. CORRIGAN: I would like to inquire of Mr. Morton if he intends by that the man or men who might be in the minority should be foreclosed from saying anything?

MR. MORTON: In answer to that question I do not intend to do anything of the kind, but I do intend to foreclose this proposition, which was a statement made at the discussion at that time, that anybody represents the Association except one who is presenting the majority report.

THE PRESIDENT: Are you ready for the question? Those in favor of the question say "aye"; those opposed "no". The ayes appear to have it; the ayes have it and the motion prevails.

THE PRESIDENT: Is there a report from the Committee on Publication?

## REPORT OF THE COMMITTEE ON PUBLICATION.

MR. WOOD: Mr. President. Owing to the absence of the Chairman of this Committee, Mr. Aarons, and perhaps through the operation of the principle that the first shall be last, and the last first, I have this report to make for the Committee. I found this afternoon a communication from Mr. Aarons, the Chairman of the Committee, under date of June 19, 1916, advising the President of the Bar Association, of his resignation as Chairman of the Committee, and a report as follows:

"I beg leave to report that Volume II of the reports of this Association, containing the proceedings of the 1915 meeting at Superior, and the addresses there delivered, has recently been published and distributed to the members.

"I wish to recommend that the publication of the proceedings and addresses hereafter be under the direction of the Secretary of the Association. The present plan of appointing a committee of six members residing in different parts of the state is obviously impracticable. The Chairman of the Publication Committee must necessarily go to the Secretary for his material, and it would seem to me that the Secretary is the proper person to have charge of this work.

"The change suggested will probably require some amendment of section 14 of our constitution.

"I wish here to express my thanks to Secretary George E. Morton for his valuable cooperation in connection with the publication of the current volume." Signed by Mr. Aarons.

I have been unable to get in communication with all of the members of the Committee since this report was called to my attention and my motion, Mr. President, is that the resignation of Mr. Aarons be accepted, and that the recommendation contained in this report be referred to the Executive Committee, to report at the next meeting of this Association.

THE PRESIDENT: Hadn't it better be with power to act?

MR. WOOD: Very well, with power to act.

THE PRESIDENT: You have heard the motion. Those in favor say "aye"; those opposed "no". The motion prevails.

MR. WILD: Upon the question of publishing our proceedings, let me make this suggestion—

THE PRESIDENT: That is to come up later. That is not now to come under discussion, but this Committee report may cover that.

### REPORT OF THE COMMITTEE ON UNIFORM JUDICIAL PROCEDURE.

THE PRESIDENT: One of the members of the special committee on Uniform Judicial Procedure has asked me to state that the Committee could report progress and wished to be continued for another year. The Committee is C. B. Bird, of Wausau, Walter C. Owen, of Madison, and John F. Martin, of Green Bay. If there is no objection, this Committee will be continued for another year; they are to act in conjunction with the American Bar Association on uniform judicial procedure. Hearing no objection, I take it it is the sense of the meeting that they be continued for another year.

### REPORT OF THE COMMITTEE ON ROBES.

THE PRESIDENT: The next is the report of the Committee on Robes, of which Mr. Lamb is chairman.

MR. FAIRCHILD: There was a motion made last year on a recommendation by the Association that the Supreme Judges wear robes. I wrote Mr. Lamb and said I wished he could get some member of the Committee to report in his absence.

Since that I have heard nothing from Mr. Lamb. I wrote him several months ago, and he said he would recommend to the Association that no recommendation be made by the Association on that subject. That is all I know about it.

THE PRESIDENT: Mr. Lamb told me the same thing.

MR. TIMLIN: I move the Committee be abolished.  
Motion carried.

## REPORT OF COMMITTEE ON RETIREMENT OF JUDGES.

THE PRESIDENT: The next is the Committee on Retirement of Judges. Mr. Hayes, chairman.

MR. HAYES: The Committee reports progress. Mr. Davis of Green Bay and myself met at Madison in December, and made inquiry to ascertain what information, if any, was available to lay before the Association, and possibly to lay before the legislature. We found that very little was available. The chairman was instructed to prepare schedules of questions, and take the matter up with the legislative bureau. That was done. Five schedules were prepared, the first consisting of 25 questions pertaining to the Supreme Court of the state; the second consisting of 25 covering the circuit courts of the state; the third covering courts outside of this state; the fourth covering the federal courts, and the fifth covering courts in England, France, Sweden, Austria, Russia, Italy, The Argentine and Japan. I then submitted the matter to the legislative bureau, and they said at first that we had imposed upon them an almost impossible task, but they set to work. We expected to get much material in time for the further meetings of the Committee in April or May. The Bureau made excellent progress, and yet took until the middle of the present month to submit the information received. I have here some fifty typewritten pages, and I am assured that there is brought together here a vast amount of material never before collected, and not to be found elsewhere in existence, but we have not had time to meet and digest it. I may say briefly that as respects the Supreme Court, they say that we have had since its organization as an independent court in 1853, 27 judges, and we have had 101 circuit judges; that the judges went upon the Supreme Court either by ap-

pointment or election at an average age of about 48, and that they served an average period of 15 years each; that the circuit judges went on the bench at an average age of 47.7 years, and served an average period of 12½ years. We find that the federal judges retired on pay have served on an average only 12 years, or half a year less than the average period of circuit judges, and a year and a half less than the average period of the judges of the Supreme Court. I cannot go into further particulars at this time. There is much valuable and interesting information, and I would ask that the Association continue the life of the Committee, if the Association thinks its life is worth continuing, and Senator Bennett has suggested that the Association authorize the Committee later to draft a bill and cause its introduction to the legislature. Nothing that we may do will probably materially influence the legislature. The thing that will influence it, if anything, is the laying before it a succinct and well-ordered statement of the information bearing upon the merits of the bill. I now move, Mr. President, that the Association continue the Committee for another year, with authority to draft a bill and cause its introduction.

Motion seconded and carried unanimously.

THE PRESIDENT: The Executive Committee to whom was referred that part of what I had to say on expert evidence recommend that the matter be referred to the Committee on Amendment of Law, with directions to consult with the new Committee on Criminal Law and Criminology, before making any report thereon. What will you do with this report?

MR. SCHMITZ: I move its adoption.

Motion seconded and carried.

THE PRESIDENT: I see that in reading over the by-laws the powers of the Judicial Committee are not broad enough to cover this subject, and hence the report. There was a committee appointed to act on the secretary's report.

MR. MORTON: That is filed. I have the report of the Committee. There are certain recommendations that are made by the Committee, of which Judge Winslow is chairman. The report is as follows:

To the Wisconsin Bar Association:

Your Committee to whom was referred the Secretary's report beg leave to report as follows:

1. As to the matter of the exchanging of the reports of the Association with other Associations or institutions, your Committee recommend: First, that the action of the Secretary in the past in this regard be approved and that in the future he be authorized to exchange the reports of the Association with other Bar Associations, institutions or libraries as in his judgment seems for the best interests of the Association; second, that he be authorized to place the reserve supply of back volumes in the custody of the State Librarian and that such librarian be given authority to attend to the exchange list, subject, of course, to the supervision of the Secretary.

2. As to the suggested amendment to that clause of the constitution relating to honorary membership, your Committee believe that the whole question of honorary membership should be carefully considered by a Committee which can give ample time and consideration to the various questions involved, and we recommend that the matter be referred to a special committee to be appointed by the chair who shall report at the next meeting of the Association.

3. As to the suggested amendment to Section 13 of the Constitution relating to the annual dues, your Committee recommend that the annual dues be Two Dollars per year, and that the Section be amended so as to read as follows:

"Section 13. The annual dues are hereby fixed at Two Dollars per year and shall be payable on or before the 1st day of June of each year. Any member subject to such dues who fails to pay the same prior to the 1st day of January following shall stand suspended and his rights as a member cease, except that he shall stand reinstated upon payment of all dues for which he is delinquent. A Second Notice or demand for the payment of dues, referring to the provisions of this section, shall be sent to all members not responding to the first demand."

4. As to the matter of the publication of the reports of the Association, your Committee recommend that the suggestion of the President be approved, namely that the proceedings be published annually in pamphlet form and distributed to members, and that every three years a bound volume be

issued as now. Under this plan there should be no pamphlet issued the year when the bound volume is issued.

Respectfully submitted,

JNO. B. WINSLOW,

Chairman.

MR. WILD: I think when we publish the pamphlets in each year we ought to omit both the constitution and list of members. We will save many dollars and lots of work by the secretary. Let the constitution and list of members be printed in the bound volume.

MR. SMITH: The report recommends that the back volumes be placed in the state library at Madison. There are three state libraries at Madison, the Supreme Court Library, the State Historical Society Library, and the Library in the Law School.

MR. MORTON: The State Law Library I meant.

MR. SMITH: Including the current volumes also?

MR. MORTON: Yes.

THE PRESIDENT: What will you do with the report of the Committee?

Motion that the report be adopted.

Motion seconded and carried.

THE PRESIDENT: I will leave to my successor the appointment of the Committee; the Committee on the audit of the treasurer's report.

MR. MORTON: That committee has reported as follows: "We have examined and found the foregoing report and cancelled vouchers submitted herewith, correct. June 29, 1916." Signed by the three members of the Committee.

Motion that the report be adopted.

Motion seconded and carried.

THE PRESIDENT: Mr. Fairchild was appointed on that Committee and he had to leave, and I substituted H. L. Smith, and he signs the report in Mr. Fairchild's place.

Committee on Nominations reported as follows:

Your Committee on Nomination of Officers for the ensuing year make the following recommendations:

President, B. R. Goggins, Grand Rapids.

Secretary & Treasurer, George E. Morton, Milwaukee.

Vice-Presidents as follows:

- |              |               |                                |
|--------------|---------------|--------------------------------|
| 1st Circuit, | C. D. Barnes, | Kenosha.                       |
| 2nd          | "             | W. A. Hayes, Milwaukee.        |
| 3rd          | "             | Fred Beglinger, Oshkosh.       |
| 4th          | "             | A. L. Haugen, Manitowoc.       |
| 5th          | "             | T. M. Priestly, Mineral Point. |
| 6th          | "             | C. L. Baldwin, La Crosse.      |
| 7th          | "             | W. E. Fisher, Stevens Point.   |
| 8th          | "             | Spencer Haven, Hudson.         |
| 9th          | "             | John B. Sanborn, Madison.      |
| 10th         | "             | Francis Bradford, Appleton.    |
| 11th         | "             | Chas. Smith, Superior.         |
| 12th         | "             | A. E. Matheson, Janesville.    |
| 13th         | "             | A. J. Frame, Waukesha.         |
| 14th         | "             | S. H. Cady, Green Bay.         |
| 15th         | "             | Wm. F. Shea, Ashland.          |
| 16th         | "             | F. E. Bump, Wausau.            |
| 17th         | "             | C. A. Veeder, Mauston.         |
| 18th         | "             | John J. Wood, Jr., Berlin.     |
| 19th         | "             | Roy P. Wilcox, Eau Claire.     |
| 20th         | "             | Allen V. Classon, Oconto.      |

Members of Executive Committee to take place of George H. Gordon of La Crosse and B. L. Parker of Green Bay, whose terms expire this year:

Joseph B. Doe of Milwaukee;  
B. L. Parker of Green Bay.

Respectfully submitted,  
J. B. WINSLOW,  
Chairman.

MR. MARTIN: I move the adoption of the report, and that the clerk be authorized to cast the unanimous ballot of the Bar Association for the officers named.

Motion carried unanimously.

THE PRESIDENT: The ballot is cast. I will appoint as a committee to conduct Mr. Goggins to the chair, Messrs. Cady, Martin and Smith. Gentlemen of the Bar Association, I take great pleasure in presenting your president, Mr. B. R. Goggins, of Grand Rapids.

MR. GOGGINS: Mr. Outgoing President, and Members of the Association. I want you to understand that I fully appre-



ciate and value this evidence of your personal good will to me. I wish that it were within my power to serve you in advancing the good purposes of this organization to the same extent that you have just now conferred honor upon me. I wish also to say that it adds to my pleasure to have come to me this distinction in this beautiful city of Oshkosh, that is located so close to the place of my birth, and where I spent some  $3\frac{1}{2}$  years in 1884 and preceding years, in the Oshkosh Normal School, located in this city; some of the most pleasant and profitable years of my life. I wish also to assure you that I fully appreciate the fact that the presidency of this great body of great lawyers of the great commonwealth of Wisconsin carries with it great responsibilities as well as high honor. I also appreciate the fact that you can scarcely expect of me the same degree of progress that you have achieved under the administration of some of my illustrious predecessors and particularly under the administration of the outgoing president; for this I regard as one of the most interesting and successful meetings of this organization that it has ever been my pleasure and privilege to attend. This means of course that I must ask of each of the other officers, and of each member of this organization probably greater aid and cooperation than you may have given to my predecessors in the past. If you do that, and I am sure you will, because I ask it, we may probably be justified in the expectation of making some fair degree of progress with our work during the coming year. Again I thank you and now call your attention to what I understand to be the only item of business left for our consideration, and that is the question of the time and place, and first the place of the next meeting of this organization.

MR. MARTIN: Mr. President, before that I think perhaps it would be fitting that we tender a vote of thanks to the local bar for their hospitality shown us.

MR. MORTON: Mr. Doerfler has sent to the desk here a resolution on that question.

MR. MARTIN: Then I will address myself to another phase of it. I insist upon having something to say. That the Bar Association tender a vote of thanks to the retiring president, and the retiring officers of this Association for the

able manner in which they have discharged their respective duties.

Motion seconded and carried.

JUDGE FOWLER: I move we extend to the local Lodge of Elks a vote of thanks for their courtesy in permitting us to use their hall.

Motion seconded and carried.

The resolution offered by Mr. Doerfler is as follows:

The Winnebago County Bar Association has always occupied a high position in the estimation of our State Bar, and we therefore looked forward with high hopes and expectations to the meeting of our Association at Oshkosh;

And as the business sessions of the Association are about to come to a close, be it,

*Resolved*, That our fondest hopes and expectations have been realized and surpassed by the royal welcome and entertainment offered and furnished by the Winnebago County Bar Association and that we hereby extend to it our most sincere gratitude and appreciation for the many kindnesses shown during the present session of our Association.

Moved that the resolution be adopted.

Motion seconded and carried.

MR. SMITH: I move that the matter of the time and place of the next meeting be referred to the Executive Committee, with power to act.

Motion seconded and carried.

MR. MORTON: I move that the matter of delegates to the American Bar Association also be left to the President to appoint.

Motion seconded and carried unanimously.

MR. MORTON: Mr. President, I call your attention now to the fact that by the election of yourself as president you have vacated the office of chairman of the Amendment of Laws Committee, and it is an elective office under the constitution.

MR. CADY: I move that Mr. P. H. Martin, of Green Bay be made chairman of the Committee on Amendment of the Law.

Motion seconded and carried.

MR. MORTON: Mr. President, it has also been called to my attention by Mr. Hudnall, that by the resignation of Mr.

Aarons there is another vacancy. Whether the Association cares to fill that vacancy on the Publication Committee will have to be determined.

**MR. HUDNALL:** I would suggest that as long as the matter of future publication, whether it be done by a Publication Committee or the secretary, has been referred to the Executive Committee, the appointment of a chairman of this Committee be also referred to the Executive Committee, and I make a motion to that effect.

Motion seconded and carried.

**MR. MARTIN:** I move you that we do now adjourn.

Motion seconded and carried.

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## APPENDIX.

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**GEORGE B. HUDNALL.**

ADDRESS OF GEORGE B. HUDNALL,  
PRESIDENT STATE BAR ASSOCIATION OF WISCONSIN  
DELIVERED JUNE 28, 1916.

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In this "Opening Address," the only duty imposed upon me by either the constitution or by-laws, I desire to call your attention to the purposes of the Association as stated in the Constitution. "The object of the Association is to maintain the honor and dignity, and to increase the usefulness and influence of the profession of the law."

Chief Justice Ryan, Chairman of the meeting of the members of the Bar held at Madison, Wisconsin, January 9, 1878, for the purpose of organizing a State Bar Association, said:

"The uses of such an Association are obvious. Without it the bar cannot properly assert itself or exercise its due influence in matters of interest to it. \* \* \* The bar, as a body, can only have the influence which properly belongs to it, on professional subjects, through an organization by which it can speak with one voice. \* \* \* Civilization, from time to time, outgrows some of the fixed rules of the common law, and it is the business of legislation to relax them and to adapt the common law to the existing conditions of society. And the profession, which is educated in the common law and has mastered it as a science, ought to have an influential voice in all legislation which modifies or repeals its rules."

"But it is not outside only, but inside of itself, that the judgment and common voice of the bar should be heard and felt. \* \* \* All efficient steps to purge the bar must come from the bar itself. \* \* \* The aggregate bar must speak and act. The great body of the profession should enforce its ethics; censure what is worthy of censure, and move to disbar all who forfeit the honor to belong to it. This I take to be a main object of the Association which you purpose to form."

The purposes for which the Association was organized, as stated by the Chief Justice, have not been accomplished.

In legislation, it is a matter of common knowledge that any bill proposed by the Association has usually met defeat at the hands of the legislature.

The sincere and persistent efforts of the Committee on Amendment of the Law to rid the profession by legislation of those who would commercialize and degrade it have so far been wholly in vain, but we hope that this state and adjoining states will at an early date pass wholesome and adequate laws on that subject.

As for the Association itself attempting to purge the profession of its "undesirables", our records, so far as I am able to discover, are barren of any attempt by the Association, as such, to disbar any member of the profession.

The lawyers in each community know well those members of the profession in that community who ought to be censured or disbarred, yet they are slow to make complaint to the Association.

If the Association is to accomplish the full purpose of its organization, its membership must be increased so as to include practically every member of the bar. It must be such an organization that every lawyer in the state will aspire to become a member of it, and not to be a member will mean professional ostracism.

From reports received by me from the Clerks of the Circuit Courts in each county in the state there are at present over 1750 lawyers in the state. Of this number only about 500, or less than one-third, belong to this Association.

If the membership of this Association included the entire bar of the state, its collective voice would be heard in the halls of legislation and its code of ethics would be more than "sounding brass or a tinkling cymbal."

The first great need of the Association is an increase in membership.

The practice of late in holding the meetings of the Association in different cities throughout the state is doing much to popularize the Association and increase its membership.

If we are to "maintain the honor and dignity and increase the usefulness and influence of the profession of the law" we must not only raise the standard of the profession, but we must also remove those things which tend to make litigation both unpopular and expensive.

There are many evils connected with the practice of the law which need remedying, and it ought to be one of the aims and purposes of this Association to call the attention of the profession and of the public to these evils and suggest the remedy.

I desire at this time to call your attention to one of those evils. It adds much to the cost of litigation and generally ends in a farce, so far as getting at the truth is concerned.

I refer to expert opinion evidence.

The present method of receiving expert testimony has had the thoughtful and serious consideration of both lawyers and judges for more than half a century, but as yet very little, if any, practical results have come from their labors.

Prof. Wigmore said in 1904 (Wigmore on Evidence, Sec. 562):

"No one plan seems to have received any general support either in professional or in public opinion."

Every one admits the necessity for a change, but no adequate remedy has yet been found, although many have been proposed and several attempts have been made to enact them into law.

James Fitzjames Stephen of England said, more than fifty years ago:

"Few spectacles, \* \* \* can be more absurd or incongruous than that of a jury composed of twelve persons who, without any previous scientific knowledge or training, are suddenly called upon to adjudicate in controversies in which the most eminent scientific men flatly contradict each other."

Mr. G. A. Endlich in 32 Am. Law. Rev. 851, says:

"It is patent to anyone who chooses to inform himself that expert testimony, as now received by our Courts, is looked upon by the public as an unmitigated farce and a nuisance."

Taylor in his work on Evidence, Section 1877, says:

"As experts usually come with a bias in their minds to support the cause in which they are embarked, little weight will in general be attached to the evidence which they give unless it is obviously based on sensible reasoning."



Best on Evidence, Section 514, has this to say on expert evidence:

"There can be no doubt that testimony is daily received in our courts as scientific evidence to which it is almost profanation to apply the term as being revolting to common sense and inconsistent with the commonest honesty on the part of those by whom it is given."

Mr. Justice Miller in *Middlings Purifier Co. vs. Christian*, 4 Dillon 448, says:

"My own experience, both in the local courts and in the Supreme Court of the United States, is, that whenever the matter in contest involves an immense sum in value and where the question turns mainly upon opinions of experts there is no difficulty in introducing any amount on either side."

Mr. Justice Greer in *Winans vs. Railroad*, 21 How. 88, said:

"Experience has shown that opposite opinions of persons professing to be experts may be obtained in any amount, and it often occurs that not only many days, but even weeks are consumed in cross examinations to test the skill or knowledge of such witnesses and the correctness of their opinions, wasting the time and wearying the patience of both court and jury and perplexing instead of elucidating the questions involved in the issue."

The Supreme Court of Kentucky in *Brown vs. Commonwealth*, 14 Bush 407, says:

"Those who have had anything like an extensive practice of law know how unreliable and worthless is the evidence of the average expert. Often the opinion is honestly formed and expressed to suit some pet theory that has no foundation in fact or experience, and sometimes it occurs that an overweening desire to place a rival practitioner in an unfavorable light before the jury and the local public leads the expert to an expression of an opinion that is not the result of observation and experience, and does not correspond with the deductions that should be made from the facts."

The Supreme Court of Georgia in *Parker vs. Johnson*, 25 Ga. 584, said:

"The rule which admits professional opinions to be received as evidence, a kind of evidence so little reliable and fraught with danger to those whose rights and interests it is to affect or control, ought not to be extended."

The Supreme Court of California, in *Grigsby vs. Clear Lake Water Co.*, 40 Cal. 405, says:

"These witnesses (expert) ought perhaps, to be selected by the Court, and should be impartial as well as learned and skillful. A contrary practice, however, is now probably too well established to allow the more salutary rule to be enforced, but it must be painfully evident to every practitioner that these witnesses are generally but adroit advocates of the theory upon which the party calling them relies rather than impartial experts upon whose superior judgment and learning the jury can safely rely. Even men of the highest character and integrity are apt to be prejudiced in favor of the party by whom they are employed, and, as matter of course, no expert is called until the party calling him is assured that his opinion will be favorable. Such evidence should be received with great caution by the jury, and never allowed, except upon subjects which require unusual scientific attainments or peculiar skill."

Lord Chief Justice Campbell said:

"It is, in my opinion, indispensable to the administration of justice that a witness should not be turned into an advocate nor an advocate into a witness."

Our own court in at least three cases has condemned the present method of obtaining expert evidence.

Chief Justice Dixon in *Daniels vs. Porter*, 26 Wis. 686 said:

"The unsatisfactory nature of such (expert) evidence is well known. The facility with which great numbers of witnesses may be marshalled on both sides of such a question, all calling themselves experts, and each anxious to display his skill and ingenuity in detecting the false or pointing out the true, and equally honest and confident that his own theory or opinion is the only correct one, and yet all on one side directly opposing all on the other, admonishes us of the fallibility of such

testimony, and of the great degree of allowance with which it must be received."

In *Hall vs. Fond du Lac*, 42 Wis. 274, Justice Cole says:

"Experience has shown that medical testimony is not always reliable."

In *Bucher vs. Wisconsin Central R. Co.*, 139 Wis. 597, Justice Timlin says:

"The testimony of experts is proverbially unreliable at best, even when the experts are learned and competent, because bias is almost unavoidable in our method of selecting experts."

It is indeed strange, in view of the universal condemnation of the present method of obtaining expert evidence, that some safe, practical and constitutional method has not been devised to supplant it.

Various remedies have from time to time been suggested, but nothing effective has been enacted into law.

James Fitzjames Stephen says:

"A conclusion usually drawn \* \* \* is that some modification ought to be introduced into our present system, if not with regard to its fundamental principle, at least with respect to scientific evidence, and we ought to take security that when scientific questions are involved, \* \* \* the verdicts on which courts of justice pronounce judgment should represent the settled opinions of men who have made a special study of the subject and not the loose impressions of unsentientific jurors."

But after reviewing suggested remedies he says:

"The objections to the adoption of any such system are three-fold, and each of the three objections is conclusive."

Alphonso T. Clearwater, 189 N. Am. Rev. 821, says:

"It is universally admitted that so grave a defect in the administration of justice should be remedied, and it is conceded that the evil is of such long standing that reform will be slow and difficult, largely because of the inertia of the bar. \* \* \* It will require time and effort to restore (to medical expert testimony) its unsullied lustre, but the aim justifies the struggle."

G. A. Endlish, 32 Am. L. Rev. 851, says:

"It is not expert testimony itself that is the evil. The evil lies in our way of handling it."

To cure this evil he suggests six remedies.

1. A stricter definition of expert capacity.
2. Limiting the number of experts to be called as witnesses.
3. Designation of the experts to be called as witnesses by the Court.
4. Abolition of hypothetical questions.
5. Summoning, by the Court, of an expert of his own choice as a witness to review the testimony already given in the case.
6. Payment of the fees of experts out of the public treasury.

Justice Kinney of the Supreme Court of Iowa suggests:

1. That experts be selected by the Court.
2. Examination in chief of all experts to be conducted by the Court leaving the parties the right to cross examine.
3. Limiting the number of witnesses.
4. Hypothetical questions to be submitted in writing to the Court, jury and witnesses.

The evils attending the present method of giving expert testimony and the remedies therefor have been presented to the Bar Associations of several states, among them, New York, Rhode Island, Michigan, Maine, Iowa, Virginia and Kentucky. And bills have been drafted and presented to the legislatures of many states, among them, Maine, New York, Kentucky, Michigan, Maryland and Wisconsin, but no law has been enacted in any state, so far as I am able to ascertain, which has been held constitutional and affords anything like a complete remedy.

In 1905 the legislature of Michigan passed an act on the subject. Sec. 1 provided that no expert should be paid or receive as compensation in any given case a sum in excess of the ordinary witness fees, unless the Court should award a larger sum. It made it a misdemeanor punishable by fine or imprisonment, or both, for any person to receive or pay a greater sum, and the guilty party might also be further punished for contempt of Court.

Sec. 2 provided that no more than three experts should be allowed to testify on either side, except in prosecutions for

homicide, unless the Court in its discretion permitted a larger number.

Sec. 3 provided that in prosecutions for homicide where the issues involved expert knowledge or opinion, the Court should appoint not exceeding three suitable disinterested persons to investigate such issues and testify at the trial; their compensation to be fixed by the Court and paid by the county. The fact that such witnesses had been appointed by the Court should be made known to the jury. This provision, however, was not to preclude either side from using other expert witnesses.

Sec. 4 provided that the act should not be applicable to witnesses testifying to the established facts or deductions of science, or to any other scientific facts, but only to witnesses testifying to matters of opinion.

In *People vs. Dickerson*, 129 N. W. Rep. 109, which was a prosecution for homicide, Section 3 of this act was held unconstitutional as not affording the defendant his constitutional guaranty of "due process of law."

The Court said that the prosecuting attorney

"and he alone must determine what witnesses shall be sworn to establish the case he presents. \* \* \* That the preparation for and conduct of the trial on behalf of the people are acts executive and administrative in character. \* \* \* That the power of selecting and appointing witnesses \* \* \* is in no sense a judicial act, and if exercised by the Court in accordance with the mandate of Section 3 would entirely change the character of criminal procedure and would seriously endanger, if not absolutely destroy, those safeguards which our constitution has so carefully enacted for the protection of the accused. \* \* \*

The appointment of experts by the Court is to be made without notice to either the prosecuting attorney or the accused. \* \* \* The names of the selected experts cannot be endorsed upon the indictment by the prosecuting attorney as required by law. \* \* \* The right of one accused of crime to know in advance the names of the witnesses who will testify against him \* \* \* is a right as ancient as our criminal jurisprudence."

The trial Court

"Is commanded to make known to the jury the fact of the appointment and that his appointees have been found by him to be suitable and disinterested. \* \* \* They testify" therefore "under a sanction which gives to their testimony practically the same weight as if it were delivered by the Court. \* \* \* To give the testimony of a witness or witnesses this extraordinary certificate of character, ability and truthfulness, while the other testimony in the case must be judged by the jury by ordinary standards is to subvert the very foundation of justice. \* \* \* We must hold" said the Court "Section 3 unconstitutional."

To my mind the reasoning of the Supreme Court of Michigan in this case is fallacious and unsound when applied to criminal law as administered in Wisconsin and in most of the other states of the Union.

As to the prosecuting attorney having the "sole right" to determine what witnesses shall be called, this decision is contrary to all authority in this country on the subject.

"At a very early date it seems to have been the practice to compel the prosecution to produce as witnesses all who saw the crime committed. Under the later and present practice, the choice, introduction and examination of the state's witnesses usually rests in the discretion of the prosecuting attorney. The Court may, however, if the case demands, compel the prosecuting attorney to call certain witnesses." 12 Cyc. 549.

In Wisconsin and many other states of the Union, the names of the witnesses for the prosecution are not required to be endorsed upon the indictment nor a list thereof delivered to the accused, and yet no one ever ventured to assert, so far as I know, that the accused was thereby deprived of his constitutional rights.

It seems to me the only objection of any merit to the Michigan statute was to that part of the act compelling the Court to make known to the jury the fact that he had appointed the witnesses. This objection is however one of sound public policy, rather than a constitutional objection.

I agree with the Committee of the Wisconsin Branch of the American Institute of Criminal Law and Criminology, of which Mr. C. B. Bird was chairman, when it said in its

report for 1914, "such a bill (as the Michigan statute) would probably be held valid in Wisconsin." Proceedings 5th Annual Meeting, page 92.

Since a part of the Michigan act was declared unconstitutional, legislatures of other states seem to hesitate about adopting any law whatever on the subject.

The American Institute of Criminal Law and Criminology has had the matter under consideration, and its Committee on Insanity and Criminal Responsibility drafted a proposed bill which was unanimously approved by the Institute at its meeting in Washington, D. C., in 1914.

This bill applies to both civil and criminal cases "Where the existence of mental disease or derangement on the part of any person becomes an issue in the trial of a case." It provides that the judge of the trial court may summon not to exceed three disinterested qualified experts to testify at the trial. These witnesses may be cross examined by counsel for both parties. Their appointment shall not preclude either party from using other expert witnesses.

It also provides that in criminal cases no testimony regarding the mental condition of the accused shall be received from witnesses summoned by the accused until the expert witnesses summoned by the prosecution have been given an opportunity to examine the accused.

It further provides that whenever, in the trial of a criminal case, the existence of mental disease on the part of the accused, either at the time of the trial or at the time of the commission of the alleged offense, becomes an issue, the Court shall commit the accused to the state hospital for the insane to be detained there for purposes of observation. All the expert witnesses in the case shall have free access to the accused for the purposes of observation and they, together with the chief physician of the hospital, are to prepare a report regarding the mental condition of the accused, which may be read in evidence at the trial. Each party may cross examine the experts of the other party.

The bill further provides that where expert witnesses have examined a person whose mental condition is an element in the case they may consult before testifying and may prepare a joint report to be introduced at the trial.

This bill was presented to the American Bar Association at

its annual meeting in 1915, and its Committee "with some measure of hesitation" recommended its approval except that part regarding commitment to the state hospital for the insane "for observation," which the Committee considered in the nature of a "Third Degrée" process. Report American Bar Association, Volume XL., page 375.

At the request of the Chairman of the Committee, action by the Association on the bill was deferred until the next meeting of the association. Ibid, page 19.

The proposed bill was also presented to the National Conference Commissioners of Uniform Legislation and the American Neurological Association.

Prof. Wigmore says of this bill:

"If this weighty body of opinion, after the fullest discussion, can be brought into agreement and proposes something as an adequate measure of reform, the rest of us may well be satisfied to accept it. I mean this literally; our profession can afford to give full faith and credit to the proposal of such a body. \* \* \* If it receives the approval of these bodies the prospect is that it will be favorably accepted in the state legislatures soon thereafter. And so a light is dawning on a problem which has long vexed two great professions." 5 J. Am. Inst. of C. & C. 650.

Notwithstanding the sources from which this bill originates and the men of high standing in the legal and medical professions who drafted it, it proposes a remedy for one class of experts only—the medical expert—and then only when "the existence of mental disease or derangement on the part of any person becomes an issue in the trial of a case." It makes no provision for those who are not classed as medical experts nor for those cases where medical testimony is necessary but where "the existence of mental disease or derangement" is not in issue.

Furthermore, it seems to me, you are not helping the jury solve the perplexing questions presented to it, when expert witnesses testify at the trial, by having the Court appoint some of the experts and then allow either party to summon other experts. By this method you get "confusion worse confounded." Either the Court should appoint all the experts or it should appoint none. It will probably be found, in actual



practice, that the same result is obtained whether the Court appoints a part only or all of the experts.

Commenting on that part of the Michigan act which provided that the prosecution or defense might call other experts on the trial, the Supreme Court of that state well said,

"This is an idle provision, for in the face of the certificate of character, fitness and ability given to the Court experts by the Court, experts summoned by either side would receive but scant consideration at the hands of the jury; their testimony would be swept aside in a breath."

Much of the proposed legislation seeks to remedy only the evils of medical expert testimony in criminal cases.

In 1915 the legislature of New York enacted a law providing that in criminal actions, or in special proceedings to inquire into the cause of detention of any person, in which the soundness of mind of a person is in issue, the Court might appoint not more than three disinterested, competent physicians to examine such person as to his soundness of mind and that the persons so appointed might thereafter be sworn as witnesses at the instance of any party to the action or proceeding; the compensation of such physicians to be paid in the same manner as other court expenses.

The bills introduced in the Legislature of Wisconsin in 1911 and 1913, but which failed of passage, provided for not less than ten nor more than twenty "State Accredited Alienists." And in every criminal action wherein the defendant should interpose a special plea of insanity as a defense, the presiding judge should appoint three of said accredited alienists to examine the accused as to his sanity and attend the trial of the special plea and testify; the experts thus appointed to be paid not more than \$15.00 a day and expenses out of the county treasury. The bills also provided that the Court might in its discretion permit other expert opinion evidence.

On the other hand, bills, which have been introduced in the legislatures of other states, notably, Maine, Kentucky, Virginia and Maryland, have sought to remedy the evils surrounding the introduction of expert testimony in all cases, civil as well as criminal, where expert or opinion evidence, whether medical or otherwise, would be admissible.

It seems to me that those who propose to legislate against the medical expert only, or against the medical expert in criminal and not in civil cases, must justify their action upon the theory that "a half loaf is better than no bread at all."

Expert testimony in civil as well as criminal cases is subject to the abuses inherent in our present system, and the medical expert is not the only expert whose testimony should be regulated by law. Any proposed law on the subject should, if possible, correct all the evils inherent in our present system of obtaining expert evidence.

Expert testimony has come to stay. It has been received in the courts for more than five hundred years. It was even permitted under the Roman law.

In the proper administration of the law we must of necessity avail ourselves of the testimony of men skilled in science and art, in mechanics, medicine and many other fields of human endeavor. We cannot shut our eyes and say that because there are evils connected with the present system of receiving such testimony we will therefore have none of it. We should endeavor to change the method by which expert testimony is now received in courts so as to eliminate the evils which have grown up around its reception, and not deprive the courts of the great benefits they receive from this kind of testimony when correctly and impartially given by the true expert.

Some fundamental changes could be made which would not be subject to any constitutional objection and which would apply to all expert evidence in both criminal and civil cases.

The number of experts could be limited by statute; the amount of their compensation fixed and be paid out of the public treasury and the taking of any other or greater compensation, either directly or indirectly made punishable by heavy fine or imprisonment, or both.

If legislation went no further than this it would expedite the trial of cases, and the expert, having no financial interest in the outcome of the litigation, and not depending upon either side for his compensation, would "have no client to serve and no partisan interests or opinions to indicate."

Orally.

Since coming here to-day I have been told of another case, State against Law. As I remember it that was a prosecution

for abortion. Dean Bardeen, if I remember rightly volunteered his services as an expert in the case, received no compensation whatever from either side, made an examination of the lady, and testified at the trial. Motion was made for a new trial and affidavits were obtained from every member of the jury, they having known of Mr. Bardeen's voluntary connection with the case, and in these affidavits they stated that knowing of Prof. Bardeen's unbiased judgment in the case, his having received no compensation from either side, they believed his testimony in preference to all the other medical testimony in the case. The case went to the Supreme Court, but that point was not raised, I believe in the Supreme Court. The motion for a new trial was denied. It simply shows what dependence juries would place in expert testimony if they know the expert called is a true expert, and not a partisan expert.

It seems to me, however, that any proposed legislation, in both criminal and civil cases, and as to all classes of experts could safely go much farther than this and yet meet with sufficient popular approval to secure its enactment into law and at the same time not trespass upon forbidden constitutional ground.

I therefore recommend the reference of this subject to your Committee on Amendment of the Law for such action, either in co-operation with the American Bar Association, or otherwise, as it may deem best and proper.

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#### ADDRESS BY BURTON HANSON.

DELIVERED JUNE 28, 1916.

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**MARVIN B. ROSENBERRY.**

ADDRESS BY HON. MARVIN B. ROSENBERRY,  
ASSOCIATE JUSTICE OF THE WISCONSIN SUPREME COURT,  
ON THE SUBJECT

WILL THE BAR FURNISH OUR LEADERS IN THE  
IMPENDING WORLD CRISIS.

DELIVERED JUNE 28, 1916.

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From the signing of Magna Charta to the present day, lawyers have been an important factor in the political and social life of the English speaking peoples. The reason is not hard to discover or difficult to understand. As the people gradually took to themselves the exercise of their inherent powers, what more natural than that the profession whose business was interpretation and exposition in one field should offer themselves or be called upon to render a like service in another field. Having assisted in giving expression to the popular will by embodying it in statutes and decisions, members of the profession were called from time to time to administer and apply the law, locally as well as nationally. Thus great administrators arose from the ranks of the profession to conduct and direct public affairs.

Trained and skilled in expression, with a wide knowledge of history and political science and an intimate acquaintance with industrial and commercial relations and conditions, the lawyers who had from time to time been called upon to express and administer the law assumed that higher duty of divining the future business and social needs of the state and of urging upon the people the necessity of action, and thus developed the far-seeing lawyer statesman, who gave to his country the highest service which it is possible for a citizen to render. Strike from the history of English speaking peoples the names and achievements of their lawyers and judges in legislation, administration and statesmanship, and much that is vital and essential is gone. One can hardly

think of English history without thinking of such lawyers as Lord Mansfield, Burke, the Pitts and Erskine.

In the history of our own country the names of Adams, Marshall, Jefferson, Webster, Calhoun and Lincoln compare quite favorably with those of Washington, Franklin, Robert Morris, Andrew Jackson and Grant. In addition to those lawyers who arose pre-eminent among the statesmen of their time, nearly every great statesman not a member of the profession has had at his side as his counsellor and aid some great lawyer.

To-day, not for the first time, but more emphatically than in a long time, the right of lawyers to leadership in public affairs, as well as their fitness for leadership, is being seriously questioned in this country. It is even more seriously questioned in England. Their unfitness is attributed to their failure to adapt themselves to changing conditions, and in particular to their inability to visualize the social revolution which is producing fundamental changes in every department of human activity and which is slowly but surely affecting our American ideals. It is not claimed that there is any lack of patriotism or devotion to duty in the lawyers called to leadership. Neither are their natural abilities, admittedly very great, in any way questioned. But it is said that the nature of their professional training and their consequent slavish adherence to precedent, not only in law but in other lines of activity, prevent them from meeting present day questions openmindedly, and that their attitude is obstructive rather than constructive. Some of the criticisms aimed at lawyers who are in high places may be and undoubtedly are deserved. But it is also true that lawyers reflect in their ideals the ideals of the people whom they serve. The faults of the political leaders of our time are not so much their personal faults as they are a reflection of a national fault. England for many decades has been warned that the path she has chosen would bring her to national misfortune if not to national dishonor. She went her way heedless alike of the cry of her engulfed millions and the prophetic voice of her ruling classes. Heeding not the voice of Lord Roberts, her greatest soldier, why should it be supposed that she would listen to the voice of a lawyer, however distinguished? Prosperous, pleasure-loving, middle class England went her way

to cricket field, race course and tavern, as the case might be, utterly unmindful of her duty to her citizens, refusing alike to be taught or warned. When the hour of her awakening came she looked up to blame her leaders, whose counsel she had scorned. Self-sufficient and complacent she refused to heed the seismic tremors of the oncoming upheaval, which found her unprepared not only from a military point of view, but commercially, politically and socially unprepared. The faults from which England suffered and from which she has not yet fully delivered herself are the faults common to all democracies, not excepting our own.

In this country the people are the repository of the sovereign powers of government. The business of government, however, is carried on not by the people but by their agents, often self-appointed, who state, interpret and administer the law in such a way as to continue themselves in public favor. They are careful not to call the attention of the people to disagreeable but nevertheless necessary things in government,—those defects which are due to the neglect of the people themselves and which can be remedied only by the imposition of restraints and the increase of burdens. They attempt to cure the faults due to carelessness and neglect by the enactment of new laws, thereby postponing the final day of reckoning and continuing for a brief period their own power and authority. The condition of England two years ago is substantially the condition of this country today. No one who has given the matter the slightest consideration doubts in the least that we are today facing a great crisis in world affairs as well as in our domestic affairs. In the face of all this what are we as a people doing to prepare for the future? Nothing, absolutely nothing. We pursue the almighty dollar with unabated vigor. We spend our substance in riotous living. We close our eyes to everything that does not please us. We pass resolutions setting forth our virtues and declaring our aspirations, and return to the plow, the counter, the shop and the office, fully satisfied that we have performed our whole duty as citizens.

We hear much of the great war across the water. We are told of the great loss of life, of the tremendous destruction of property, of the irreparable economic losses of the European nations. Our newspapers, our magazines and periodicals



are filled with the material aspects of the war. While the loss of life and property is inconceivable in its proportions, there are other, and to my mind, greater changes taking place in the lives of the nations now engaged in war. The people of the several countries are being welded into national units. The ties that bind the people one to another and to their respective countries are cemented with the blood of brothers, sons and fathers. Their souls are purified as by fire. They have learned anew the lessons of sacrifice for each other and of sacrifice for their country and the common good. It is no hard wrung, begrudged sacrifice that, but a sacrifice, whether it be of blood or treasure, laid freely and gladly upon the country's altar. Frugality, thrift, service for the common welfare, have become matters of habit. The lives of the people are warm and pulsating with a renewed, recreated and regenerated national spirit. Who can observe these great fundamental changes in the lives of the people of these nations without wonder and applause?

The nations now engaged in war will emerge from the struggle, but they will come out changed and revolutionized. They will be led by the ablest and strongest men among them. The mere politician, the time server and the place hunter has long since been discarded. The people will stand unitedly behind their leaders and new forces will be felt in the world of trade and commerce, the like of which this generation or its predecessor has not seen. Prepared to make any sacrifice, trained and disciplined in the stern school of necessity, hardened by years of toil and suffering, the warring nations will turn their energies to peaceful pursuits with multiplied vigor and a highly increased effectiveness. Accustomed to a standard of living based on necessities alone, with an energy and determination that knows no limits, these nations will exert a force and power well nigh irresistible.

This country, grown rich and indifferent, impatient of the slightest discipline, totally oblivious of everything but the business and pleasure of the hour, untrained, profligate, unorganized, almost wholly individualistic in thought and action, is, as was England, practically without national consciousness. We think in terms of our respective localities, and at most our political vision is limited by the boundaries

of our state. Is Texas in trouble? Let Texas look out for herself. Has California a Japanese problem? That is California's business. We do not know much about it and care less. Of course we do not say that, but what is more to the point, we act it. Very shortly we must as a nation enter into competition with these trained, organized, disciplined, thrifty peoples of the old world. Can anyone doubt what the result will be? There can be but one result unless we get ready to meet the situation when and as it arises. No one can foresee the future, but it needs no prophet to point the way, unless we are prepared as a nation to mend our ways.

Here lies the great and magnificent opportunity of the American Bar. The people of this country naturally look to the bar for leadership in public affairs. They should not look in vain. Let us consider in a general way the condition of the country, the great need of capable leadership and the duty of the bar to respond to the demand made upon it. Leadership imposes responsibility, labor and personal sacrifice. Its rewards are often small, and in many instances withheld altogether. Nevertheless it is an inspiring thing, and is often, like virtue, its own reward.

America will never fail because of a lack of material resources. As a nation we are rich beyond measure in material wealth. America will never fail because she lacks men; she has them in unnumbered millions. America has every natural advantage which location can give her. If America ever fails it will not be because she is weak in material things; it will be because she is weak in those great spiritual forces which make for genuine national greatness. As a nation we refuse to submit to any sort of rational discipline. We regard ourselves as unique among the nations of the world. Fundamental laws that apply to every other nation and have without exception applied to every nation since the dawn of history, do not apply to us, at least so we think. One would-be leader of thought in this country openly and avowedly discards the lessons of history and the accepted axioms of political science, and yet he has a very respectable following. All of his followers do not ride in the kind of automobile he makes either.

We praise and laud ourselves for virtues which we as a

nation do not possess; we mistake the shadow for the substance; we refuse to take stock of ourselves and face the result. We are for peace; therefore there shall be no war. We admire thrift, economy, the results of discipline, and an orderly, well organized national life, but we refuse to discommodate ourselves as individuals in order that we may attain it. The fact that our people have proportionately the lowest savings account of any civilized people in the world, and that as a nation we heap up the pork barrel and make only a grudging provision for the really vital and essential things, and spend even that little wastefully, indicts us as a people and as a nation with the crime of extravagance. In short, we claim we are nationally great, but refuse to do the things necessary to make us a genuinely great nation.

We speak of preparedness as if preparedness meant only the making of guns, ammunition and battleships. There is a preparedness that this country needs more than it needs soldiers and armament, and that is a preparation of the mind and of the soul that will enable us to do the things which we must do if we are to meet successfully the issues before us. Have you a son? Are you ready to send him forth to die on a battlefield or do you want to hire a substitute for him? When should we have commenced to get ready to make a sacrifice for our country such as that? It was when we learned our prayers at our mother's knee. To give our men military training is not enough; our women should be taught the necessity of sacrifice, and, if need be, the duty of giving up sons, fathers and brothers for the country's service, not in an ecstasy of fervent patriotism, but thoughtfully and reverently as one might lay an offering upon the altar of his God. A sacrifice such as that should not have the accompaniment of trumpet and drum, but should be made on bended knee in the quiet and seclusion of the home. The loved one should be sent forth not to be a hero, but to serve wherever and in whatever capacity his country needs him. These lessons we must learn, if not by observation then in the school of experience. An American woman remarked not long since that she would rather this country were ruled by any European nation than that her boy should die upon the field of battle. Has anyone sufficient power of imagination to think of a French or German

mother speaking thus? God forbid that the bitter cup Europe now drains to the dregs should be pressed to the lips of this nation. If we will not learn otherwise, we shall learn in the hard and costly school of experience. We cannot as a nation, any more than we can as individuals, escape the fundamental laws of creation; we must recognize and obey them.

Suppose a kernel of corn had the power to plant itself where it would. If it chose to plant itself in the shade of a tree in shallow and barren soil, in defiance of every law of its nature, would it grow or increase because it desired to do so? If it really desired to grow it would obey the fundamental law of its being, because in no other way could it succeed. Obey the law of your being or perish, applies to a nation just as well as it does to a kernel of corn.

We cannot make ourselves great by adopting resolutions declaring that we are great. We cannot have peace or prosperity or true national greatness unless we think and do those things which a national life truly great requires shall be done in order to attain this desired end. If the kernel of corn is not planted in rich soil in the sunlight it will die, or at best grow very imperfectly. It may be pleasanter in the shade than in the hot glare of the sun. The protection of the mighty oak may save it from the stress of wind and weather, but the law of its being requires sunshine and rain, and without them it perishes. The choice is not between what is pleasant and what is unpleasant, it is between life and death. As a nation we have in recent years chosen the pleasant things, the agreeable things. As a nation we have left undone those things which we ought to have done and have done those things which we ought not to have done.

We need reform in our national life, but it should be a fundamental reform, not a superficial and stratified reform. We have witnessed in this country during recent years the efforts of one part of society to "reform" another part in its own interest. That part of society which thinks it has not an opportunity in life equal to that of some other part will never be able to reform the remaining part so as to create equality of opportunity, so long as the units of the reforming part desire each in its own behalf to belong to the favored class. What we need is a reform which will touch equally

the lives of all our people, from the most exalted to the humblest. A reform which will touch our ideals as a people instead of touching our circumstances alone. There is something fundamentally wrong with a society a member of which is applauded for hiring two liveried servants to attend a dog when children are crying for bread and mothers lack the means of securing the barest necessities of life. Social conditions of which an exhibition of that sort is merely an incident, point in the same direction, whether observed in ancient Rome, in modern England or in free America. Our social ideals need recasting. Are we as a people strong enough, virile enough to accomplish this from within by the forces inherent in our social being, or must it be imposed upon us by some force from without? It is certainly not an unusual thing, if indeed it is not the rule, that wealthy nations of superior culture are supplanted by so-called inferior nations of a lower culture. I do not believe that we are to be supplanted or that the culture of another people is to be imposed upon us by force. But I do believe that if such a thing is to be avoided ultimately, the people of this country have a great work before them. The lawyer by reason of his training is peculiarly well fitted to guide the people in an effort to realize anew the ideals upon which our government is founded.

It is thought by many that when the European war ends and the tension of that situation is relieved the world will spring back into place much as a stretched rubber might when released. To my mind such a conception is without any foundation. The world never goes back; it goes forward. The England of July 1914 has forever passed away. A new, a radically different England will exist when peace is declared. The same thing is true of every other country engaged in this great conflict. The changes which will be wrought by the war will not be superficial; they will be fundamental and lasting. No one can foresee how or where the transformation will begin, but that conditions will be different and that changes of a fundamental and radical type will come seems to be clear.

Dr. Charles W. Elliott, President Emeritus of Harvard University, says:

"A precious lesson of the war will be:

"Toward every kind of national efficiency discipline is good, and cooperation is good, but for the highest efficiency both should be consented to in liberty," and that "therefore, we look forward with hope to a diminution in Europe of the autocratic forms and an increase of the constitutional forms, as well as to better security for both large and small states against sudden invasion."\*

His opinion is entitled to great respect, and it is concurred in in general, perhaps not in detail, by many of the great men of all countries.

A reading of the whole article shows that his mind dwells more upon the changes that are to take place in those governments which he denominates autocratic. If democracies are to become more efficient, changes nearly as great must take place in them and they must adopt those ideals and use those methods which make for efficiency. This does not necessarily mean that democracies must become more autocratic. But it does mean that we must cease to think almost entirely as individuals in terms of our respective localities and begin to think collectively as a nation and in national terms.

The necessity for this change is to my mind absolutely demonstrated by the experience of England. If this war has demonstrated any one thing more clearly than another, it is that a nation in order to maintain itself under present-day conditions must be organized, not only from a military point of view, but commercially, industrially and socially. Without adequate organization a people is like a jellyfish unable to move itself for its own protection or in its own interest. Organization implies supervision, control, and an interdependence of parts. This means the imposition of restraint upon some and of additional burdens upon others, and above all it means a sense of mutuality of interest in the people at large.

It is not proposed to prophesy at this time as to the particular form or manner in which the fundamental questions growing out of these evolutionary processes are to be presented to us for solution. My task is to point out the fact that such questions will be presented and to call attention to

\*Charles W. Elliott, *National Efficiency Under Free Governments*, *Atlantic Monthly*, April, 1915, p. 433.

the manner in which our profession as a whole should meet them. The civilized world was more than a generation in adjusting itself to the changed conditions due to the Napoleonic wars. Political evolutions seem to proceed by a series of upheavals and eruptions followed by comparatively long periods of quiescence and readjustment. The impulse which democracy received from the French Revolution and the succeeding struggle has not yet died away, and if, as Dr. Elliott thinks, the present war is a struggle between democracy and autocracy, we may well await the result with grave concern.

Assuming that fundamental changes in our political, commercial, industrial and social institutions will follow the declaration of peace, what shall be the attitude of the people of this country, and particularly of the members of our profession in respect thereto? While it is true, as is often charged, that the study of law and its practice, tends to cultivate a respect for precedent, that fact does not necessarily indict either the law or the profession. Many experiments in lawmaking are inflicted upon the people in the name of progress which are worse than useless, in that they have been repeatedly tried in varying forms and discarded after trial as worthless or inadequate. The study of the past ought to be useful as an aid to true progress.

On the other hand, it is charged, and perhaps with some reason, that lawyers as a class are anti-social, in that they instinctively and without just reason combat any proposed change in the law and thereby unnecessarily obstruct social progress. It is even charged that the profession lends itself consciously to efforts of this kind for reward. This charge cannot be sustained. Individual lawyers may have prostituted their services in individual cases, but that the profession as a whole is guilty of that offense, or even condones it, is not true.

In the coming crisis the great demand will be for leadership, wise, sane, constructive, forward-looking leadership. Leading involves the idea of going, advancing. Leaders cannot stand still. If they do they cease to be leaders. We shall need leaders all along the line. It is not enough that there be some great central outstanding figure in our national life. In addition to the commanding general we need corps

commanders, brigadiers, colonels, majors, lieutenants, captains and corporals, all imbued with the same ideals, striving toward the same ends.

There is in society, there always has been and there always will be, a division into two classes: those naturally radical and those naturally conservative. The progress of society has been and will continue to be a resultant of these two great social forces. The final outcome in the struggle for social advance has been a compromise between the extreme on one side and the extreme on the other. A wise leadership is one which moves toward the desired goal and attains it with the least possible divergence. If ultra conservative counsels prevail for a time and progress thereby seems to be unduly obstructed, some great radical leader arises and the whole movement simply swings around the obstruction and passes on, and in turn its errors are corrected by reaction, the result of which may be that the movement swings too far to the other side and becomes again ultra conservative, and so the movement goes on, swinging first from one side of the true line of progress to the other.

In the present situation the legal profession can perform no higher or greater service to the country than to make a conscious effort to guide the people in the evolutionary processes and changes which are to follow this great upheaval, and direct the social advance along constitutional lines, to the end that true democracy may be preserved, that the social fabric may be strengthened and that real genuine progress may be attained without the violent actions and reactions which are sure to result if obstruction is attempted.

There is a class of people, generally radicals, who finding themselves thwarted by the law, especially if the legal provision is embodied in the constitution, think that the destruction of the law or of the constitution, as the case may be, will result in social advancement. People of this type do not realize that in the main the constitution instead of being an obstruction is a guide and an aid to progress. If some pet theory runs counter to the constitution the very strong presumption is that the constitution is right and the theory is wrong. The law is not a fixed and unchangeable thing, but is a living, growing, expanding body of principles, which adjusts itself to changing social conditions. Speaking of the



fact that the law is to a certain extent a progressive science, and after enumerating a large number of changes which had occurred in substantive law, Mr. Justice Brown, in *Holden vs. Hardy*, referring to these changes, said:

"They are mentioned only for the purpose of calling attention to the probability that other changes of no less importance may be made in the future, and that while the cardinal principles of justice are immutable, the methods by which justice is administered are subject to constant fluctuation. \* \* \* \* Of course it is impossible to forecast the character or extent of these changes, but in view of the fact that from the day Magna Charta was signed to the present moment, amendments to the structure of the law have been made with increasing frequency, it is impossible to suppose that they will not continue, and the law be forced to adopt itself to new conditions of society." \* \* \* \*

We as a profession owe it to our country then to guide the coming social changes, in so far as it shall be necessary to express the changes in statute, along correct lines, to the end that social as well as abstract justice may be achieved and an orderly government maintained. To do this we as a profession must face the future openmindedly, recognizing the fact that changes are bound to come, and assist in and not obstruct the development of our law to meet the new situation. Lawyers at times are prone to mistake an ancient idea for a vested right and to adhere to some long established usage or practice as if it were the final embodiment of a great sacred principle and not a mere rule of conduct. This is a mistake. A plan may not be good because it is old or bad because it is new. Every proposed step should be examined and passed upon on its merits. We should encourage and lend our aid in every way possible to the end that any necessary changes in our laws and institutions may be achieved without violent shock to the body politic and with the final result that complete justice shall be done.

In my opinion the change will not require any radical reconstruction of our law. It must be more a change in ideals, in ends to be striven for, than anything else.

We are almost unorganized as compared with the countries of the old world, but we have one great, and within

limits, fairly efficient organization in this country, and that is the public school system. It seems to me that we as a people might encourage as a part of the instruction furnished in public schools the giving of a certain amount of training of a military character to every boy who goes into school, not for the purpose of preparing him to be a soldier, but for the purpose of preparing him to be a citizen, to teach him respect for authority, to inculcate in him an appreciation of what his country does for him, teach him lessons of obedience and self control, and to make him ready, not for the army, but for the farm, the shop and for life in general. Our young people lack almost entirely in reverence either for things secular or sacred. This is not the fault of the young people. It is the fault of their elders and the system of education under which they have been reared. Instruction of the type proposed would tend at least in the opposite direction and would inculcate a sense of responsibility, an appreciation of the value of organization and united effort and would tend to stimulate collective thinking. Its possibilities for good in the present situation in which this country finds itself, it seems to me are beyond the powers of imagination. If there are legal difficulties they are not insurmountable and the profession can do much to remove them.

We as a people abhor, and rightly so, anything pertaining to a militaristic ideal. But that is no reason why we should refuse to adopt those methods which tend to our betterment; nor is there any reason to suppose that we shall be unable to control or keep within bounds any undesirable tendency which may develop in the course of time, if indeed any should develop.

If we cannot have a complete military system which would include every boy within its scope, that is no reason why we should not take what we can get if it tends along right lines. The encouragement of organizations such as the Boy Scouts and other like efforts should be continued and stimulated. They make for good in every sense of the term and are entitled to wide and intelligent support. We have had in our national life a certain pioneer element. The development of our great frontiers, which in our generation have largely if not entirely passed away, brought with it a generation of sturdy men. The pioneer was of a strong,

virile, though sometimes violent type; nevertheless he made for strength and upon the whole for righteousness, and a conscious effort should be made to supply to our national life that coloring which the pioneer spirit gave to it and which is now so largely lost.

There is a tendency to magnify the little and inconsequential and to ignore the big, real, fundamental things. We spend much time and effort in passing laws to regulate the length of bed sheets, upper and lower berths, the size of fish which shall be caught, and other like things, all well enough perhaps in their way, but not vastly important. Whether we leave the big things untouched because they are big or for some other reason, is immaterial. We avoid them as long as possible. Amendments to school laws, highway laws, game and fish laws, are made so often as to be considered almost as a matter of course. On the other hand, fundamental questions, such as the relation of employer and employee, capital and labor, regulation of public utilities, and other large questions, receive legislative notice only after a long struggle and after legislative attention has been sharply challenged. Much better laws would be enacted and better results achieved if the needs of the people could be anticipated seasonably instead of delaying and postponing efforts to realize legitimate and proper social purposes and ideals until action is compelled by an overwhelming demand therefor on the part of the people. The difficulty in this, as in many other instances, is we think too much as individuals and not enough collectively as members of society. Here again the bar can render a valuable service in advocating wise laws and seeing that they are properly drawn to accomplish the desired end.

A part of the readjustment which will follow in the generation succeeding this war will be an effort at more just distribution of property. This does not mean that property is to be taken from one class of society and handed to another. But it does mean that when the weaker, more inefficient and less capable members of society have done their best and that best fails to provide them with what the interest of the state requires them to have, society shall step in and complete the work and make the necessary provision. This intervention should be regarded not as charity but as a social duty. This assumes that the weaker member will do all that

he can and not do nothing or as little as he can. The idea that that country is governed best which is governed least worked out fairly well as long as we had great unsettled areas of arable land and vast natural resources, all to be had for the mere asking. But as our population grows denser and competition keener and opportunity less, society in its own interest will find it wise to make such provision that there shall be no submerged and hopeless class of society like that to be found in England prior to the war, and which in the hour of England's trial proved its greatest fundamental weakness. An anaemic, sodden and disheartened element in its population is a source of weakness to any nation. Good citizens cannot be made out of inebriates and beggars; neither can good soldiers be made of such material.

There are numerous respects in which society will find it in its own interest advisable to encourage and protect the weaker members of society. How or in what form these matters will be presented, of course no one can now foresee. Future development should be based upon the theory that each member of society contributes to the fair measure of his ability to the general welfare. The idea that some part of society owes some other part a living should be combatted to the uttermost.

Proper leadership will give the people an opportunity to express not only their material but their spiritual aspirations. A real leader should not only formulate and express the hopes of the people; he should anticipate them. The people of this country are more idealistic than is generally supposed, and they are inherently sound.

If the production of wealth, due to our abundant natural advantages, has for the time diverted the attention of our people from other things of equal if not of greater value, such diversion is but temporary. Already there is in our national life a very notable tendency toward a re-establishment of fundamental values. There is no question but that the desirability of wealth has in our country been greatly over-emphasized, and the worth of other equally necessary elements of our national life has been correspondingly obscured.

The great bulk of our population, varied though its ancestry may be, nevertheless has before it correct ideals. While

many despair as to the future of this country because of the racial and social differences existent in our population, their depression is unwarranted. The hour has come when the thought and energy of the whole people should be given without reservation and undividedly to America and her interests. This is not a time when we can afford to give to other countries any consideration which in the slightest degree detracts from the service which he might otherwise render to this country. We need today in the affairs of this country more of the spirit of forbearance and less accusation and recrimination. While we do not as citizens understand everything alike yet we all do understand that America and her interests are not only first but are everything. However divergent our sympathies may be as between other countries, as between this country and any other country, or all other countries, we are today a homogeneous people united in serving our country.

A call for volunteers to defend this country would meet with a response from our adopted citizens and their immediate descendants as generous, if not proportionately more generous, than would be the response of those whose forebears came to this country in a time more distant. Why? Because the later arrivals have the traditions necessary to enable them to make the sacrifice called for. They would by their deeds demonstrate the character of their Americanism, and prove themselves able, strong, true Americans. When we think of the response the recent emigrants of that day made to the call of Lincoln, we cannot doubt that those of our day would in the hour of trial be among our government's strongest supporters. Those who profess to doubt the loyalty of our naturalized citizens to this government do not know them.

That age old question "Am I my brother's keeper?" will be put to the twentieth century, and I believe that the twentieth century will make a reply to that question radically different from that made by the nineteenth century. The great vital principle that runs through and permeates the life of ever Christian people is that enunciated by the great Teacher of mankind two thousand years ago "Love thy neighbor as thyself." This principle has never yet been given full force and effect in the life of any nation. Today

we see men upon the battlefield using their utmost endeavors in the service and at the command of the nation to kill each other. Wounded and disabled, no longer a part of the nation's army, they resume their individuality, and instead of trying to kill each other they assist each other in an effort to alleviate pain and suffering. Here we have a demonstration of the difference between national and individual ideals. One of an elemental primordial character, the other human and Christlike. May we not hope that the ideal which so generally prevails with individuals and is so generously exhibited today upon the battlefield may become the ideal of nations as well as individuals? A long step will be taken in that direction when we begin to think collectively as a nation and each nation shall within itself achieve in its national life the realization of that great principle. Society will then no longer condone the exploitation of the weak by the strong. Our national ideal will then no longer be expressed by the verb "to get," but by the verb "to serve."

If the bar is to furnish our leaders in the impending crisis, we as a profession must face the future with an open mind, a courageous heart and a strong hand, forward-looking, not forgetting the lessons of the past, help solve the problems of the future in a spirit of service and helpfulness. In this way we will not only be of value to our time and generation, but will achieve in our own lives the great satisfaction of having served mankind to the best of our ability and of having done our best to uphold the institutions and laws of our country.

The genius of the American people has so far enabled it to meet successfully every crisis in its history, and there is no reason to suppose that it will not continue to do so. There is every reason to believe and hope that in the impending crisis there will come from the ranks of our profession some great prophetic soul who will be able to do for national consciousness what Patrick Henry did for the struggling colonists, what Alexander Hamilton did for the bankrupt republic, what John Marshall did for constitutional government, what Daniel Webster did for national political unity, and what was done in the greatest social and economic crisis this country ever met, by that foremost lawyer, statesman and American, Abraham Lincoln.

DISCUSSION OF JUSTICE ROSENBERY'S PAPER  
BY C. B. BIRD.

Mr. President, Ladies and Gentlemen: One never knows what he is getting into. You must realize as well as I do how utterly impossible it is to discuss the paper that has been read here. But few words need be said. I shall say but few.

I think Justice Rosenberry has in the fore part of his paper, hit right on the head the problem of whether this government or so far as that is concerned, any government by the people and on behalf of the people, is going to live or die. That is, it all comes down to the question of whether a people can learn to discipline themselves, because that is the problem. We don't like to discipline ourselves as individuals. Neither do we as a nation like to discipline ourselves. But the man who does discipline himself is the one who becomes a real man, and who lives to be of service to the community. It will have to be exactly the same way with the nation. If we, as a people governing ourselves, are going to survive instead of die in the midst of plenty, it will be because the people as a whole, who are the governing force, will have sufficient vision to see the necessity of discipline. I believe there is no other way to look to the future by this or any other people-governed country. Why, that is as old as history. The prophet said: "If there be no vision, the people perish."

That comes to the more intricate and difficult question, how shall a people learn to discipline themselves? Can the bar teach them? The bar have been the leaders generally in the past. Can we be so in the future? Probably that will depend largely on whether the bar learns to discipline itself. I do not take very much to this theory of persons who want to reform the other fellow. We may better start reforming ourselves. We know more about ourselves than we do about the other fellow. That, as I think I have said before on some occasions, is the real difficulty with many of our reform movements. Those who best understand the situation and can best apply the reform, are unwilling to do it, and they therefore, leave the work to people who don't understand it, and who therefore make more or less of a botch of the whole thing. If we as lawyers—and as this is

a free meeting I shall include judges as well—(laughter)—are to expect the people to look to the bar and to our whole judicial administration for leadership, there must be discipline within our own ranks. We have discussed a good deal the question of disciplining simply those of our members who are guilty of individual shortcomings. That is a mere detail. We must look further and beyond that. We must get to the point where we, as a bar, and the judges, as courts, can take a broad general view of the larger department of the administration of justice. If judges merely content themselves with deciding the particular question which may be presented to them, and ending their labors, and if lawyers merely content themselves with presenting to the courts particular questions which they are employed to present, and let their labors end, it may be—I don't know that it is so, but it may be that the first thing we know in the road we are traveling we will find ourselves plumb up against the end of the road where we will stop, and we will find that from then on some other road must be traveled.

In my judgment there is a large problem facing the whole question of administration of justice. I do not care to express any particular views upon the question of whether we need a new method of administration of justice or not. I can hardly see where we do, and yet it may be that we do. There are mutterings that we must give heed to. If they are wrong, we must show they are wrong. If they are right, we must heed them and find and apply a remedy. Lawyers, who are officers of the judicial department, just as much a part as the judges are, might just as well accept the responsibilities that go with the official position or else discard the idea that we are officers of the court. The judicial department is independent. The jurisdiction of which it has exclusive control is the administration of justice, which means to see that justice is done between man and man throughout the length and breadth of the land. There is no other department of the government which has that jurisdiction. Talk about the legislature. I don't want to discuss that. They lay down little rules here and there, but the real fundamental principles of justice have been and will be for years to come, found in the principles of the common law which are established by the courts, and which are expanded or cur-



tailed as the changing conditions of the time require. The courts and lawyers have that jurisdiction exclusively. People are not going to listen to us if we say, "well it is not my fault where there has been a miscarriage of justice." "The trial court decided so and so." "Yes, he was wrong. The appellate court reversed it and sent it back for a new trial. We did all we could", etc. The people are looking for somebody to take a large, broad, comprehensive administrative view of the administration of justice in this country, and assume the responsibility, and see to it that justice is in fact done, and they are not going to listen to excuses until that is done. If we can meet the situation, apply such remedies as are needed to existing abuses, if there are any, and I think there are some, and evolve in some way a method which will administer justice better than it is done today, then we will be entitled to and the people of the country will look to us for, leadership in other respects. If we cannot set our own house in order, we cannot expect them to look to us for advice in reference to setting other houses in order. That is all I have to say. (Applause).

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DISCUSSION OF JUSTICE ROSENBERY'S PAPER  
BY CHRISTIAN DOERFLER.

MR. DOERFLER: Mr. President, and Gentlemen. I have listened with a great deal of interest to the keen analysis of Justice Rosenberry with reference to the impending crisis, and the subject which has been assigned to him, and I must say that I was pleasantly surprised particularly in one respect.

It was whispered in my ear at or about the time when Justice Rosenberry was appointed to the Supreme Court, and I don't know but what others in this audience have heard like whisperings, that Justice Rosenberry was a conservative. I am now satisfied beyond a reasonable doubt that he is not a conservative, but a progressive. In fact the spirit of progress and progressivism—I don't mean republican or democratic progressivism particularly, but in a general sense—pervaded his entire paper, and I want to pay particularly my respects, not only on account of the keen analysis which

he has furnished in this paper of that situation, but also on account of the progressive spirit that he has shown throughout the entire paper.

I agree in the main with everything that our Justice of the Supreme Court has said. In some minor details I disagree with him. I appreciate the situation that exists in the European countries, where millions of lives have already been lost, and undoubtedly will be lost in the course of the next year or so; where thousands and millions of dependents have been created, and where billions of dollars of wealth have been destroyed. He has particularly emphasized the fact that millions of men after the war will return to their homes. They will have endured hardships such as have not been endured by any battling people in the history of the world. They will have become accustomed to living upon the merest necessities, and they will return to their homes trained to a situation that will meet almost any emergency that can possibly arise. Not only that, but by reason of the sacrifices that they have made, by reason of the dire experiences that they have gone through during those years of bitter conflict, they will be endowed with a national and a patriotic spirit such as no civilized country in the world has ever known before. The Justice also pictured very minutely and correctly the spirit of the American people. No one can have a higher regard for the spirit of the American people than I have. I am a native-born American, although the term hyphenated American is sometimes applied. We are as a nation, a great nation. No nation has the material wealth or the material prosperity that this nation has. True, as the Justice has said, the spirit that was developed during the early pioneer days has passed away to a great extent, and the natural condition of this country is not now as conducive to bring about and develop that same class of sturdy men that composed the pioneers of this country. We have gone to too great an extent into furthering our own material prosperity, actuated to a great extent by a spirit of selfishness. I say right here that if there is a calling upon the face of the earth where selfishness ought not to exist in the slightest degree it is in the practice of the law. The lawyer to whom is accorded the privilege of practicing his profession, has extended to him a great privilege. To be a successful lawyer

it is necessary to have a good education; it is necessary to have training. It is a privilege in itself, and to a true lawyer the practice of the profession, which is not only service to himself but service to his fellowmen, is a far greater privilege than any privilege that can be afforded by any material wealth or material prosperity. We should not measure the character of any man, particularly a lawyer, by reason of his material success so much as by reason of the service that he performs for his fellowmen. It is for the lawyers to take up the great questions that are involved in the subject matter here, in an effort to solve them; to lay plans for organization so that this country at the close of this crisis may meet the great nations of the earth in solving all the difficult questions which will come before us at that time. The great question before this country is the question of preparedness. I would rather that this country follow the militaristic spirit of Germany, where every man capable of bearing arms must bear his share of the burden of military service during a period of his life, so that at any time he may be in the position when called upon, to perform the service for his country, than to be in the position that the citizens of this country are in at the present time, where preparedness has been almost completely neglected. I believe that every citizen within the proper age limit ought to be subjected to a certain amount of military training. I believe that we ought to have a military organization, something along the line of the army of Switzerland, and the primary benefit that I can see in such an organization, is that he who is called upon to serve his country and to make sacrifices for his country, above all comes to a realization of a true spirit of patriotism. I believe that we ought to have such an organization, in which is called into service the banker, the lawyer, the doctor, the capitalist, the manufacturer and the common day laborer and I believe in an army, a standing army, if you wish to call it so, that will be of use not only in times of war but also in times of peace; an army that will assist in redeeming the great arid plains of the West; that will assist in building necessary dams for the purpose of protecting the lives and property of those who live in close proximity to our large rivers. I believe in an army that will assist in constructing great national high-

ways, and I believe that the younger element of our profession, whose duty it will be during the greater portion of their lives to perform intellectual labor, that for them no greater service could be performed than to call them out during a certain period while they are young, strong and able to perform hard manual labor for the benefit of the country; and I believe we will make better citizens of them, and create a better and stronger spirit of patriotism than we could otherwise. If we had done that heretofore, we would have all over this country ready for service an army imbued with such spirit as does not exist in any civilized nation in the world.

There are other questions that the lawyers will have to devote their attention to; the question of the establishment of a merchant marine. I believe that we ought to have an American merchant marine to carry our goods upon the high seas. Whether it be established by subsidy, or by government ownership, or by any other means, we must have a merchant marine established in some way, and its establishment and creation and maintenance is a subject to which the bright legal minds ought to devote their attention. The question of capital and labor, production and distribution of wealth, all are questions that the lawyers ought to consider and take a leading part in; and above all, the question of settlement of international disputes by an international tribunal; a compulsory settlement, which is the goal that we are all looking forward to today. I have not for many years heard so high or noble an expression as that which it was reported in the newspapers recently was made by our eminent Chief Justice Winslow, at a banquet in the City of Chicago, before the City Club of that City, where he stated, if I remember the language correctly, "Men are not born equal, but it is the duty of the law to make them so." If it is the duty of the law to make them so, then it is the duty of the lawyer, who is the sworn minister of justice, and who is in a sense a governmental officer, to aid in doing that in the course of his service, not only for himself but for his country, to equalize as much as possible God's creatures. We are all God's creatures. We are all the reflections of one Divine Being. Some of us truly have been more fortunate, have had more opportunities in the way of education by environ-

ment and by heredity, but we all reflect one Divine Spirit, and our duty should be first and above all towards our fellowmen. If we do that, then we will demonstrate and bring to a realization the doctrine of brotherly love, which I believe, is the greatest doctrine that ever was announced by any being on the face of the earth.

JUDGE CHARLES C. SMITH: It is the only doctrine.

MR. DOERFLER: It is the only doctrine. Will lawyers furnish leaders in this coming crisis? The lawyers of this country, and the lawyers of almost every civilization have always furnished to a great extent, the leaders, and they will furnish the leaders in this present crisis. The lawyers can as an adjunct to their bar associations, where as a rule they discuss merely questions of law, take up great questions of political economy, questions of the rights of labor and capital, questions of the organization and maintenance of merchant marine; questions of the settlement of international disputes, and if these subjects are injected into the course of the discussions before bar associations, and if the people at large come to a realization that the lawyer does not in his organization simply, exist for the purpose of drawing hair-splitting distinctions with reference to legal doctrines, but that his heart and soul goes out for the welfare of the people at large then I say that the lawyers will occupy in the minds and estimation of the people at large, a position which they do not occupy at the present time.

I don't know but what I have wandered somewhat from the subject, Gentlemen, but these thoughts have occurred to me, and I thank you for your attention. (Applause).

ADDRESS BY HON. CHESTER A. FOWLER,  
ON THE SUBJECT  
SHOULD THE VARIOUS MUNICIPAL COURTS OF  
WISCONSIN OUTSIDE THE COUNTY OF  
MILWAUKEE, BE STANDARDIZED?

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DELIVERED JUNE 29, 1916.

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To enable one to arrive at a conclusion respecting the need for the standardization of municipal courts, it is necessary to have in mind their variations.

There are in the state, outside of Milwaukee, something like one hundred municipal courts, or other courts of different name but like nature. One such court is called a superior court, and there are several county courts exercising municipal court jurisdiction. The civil jurisdiction of these courts of special jurisdiction ranges from that of a justice of the peace to cases involving claims not exceeding five million dollars. The judgments of some are liens on real estate; of others, not until transcripts are docketed, like justice of the peace judgments. Their criminal jurisdiction ranges from that of a Justice of the Peace to cases wherein murder in the first degree is charged. In some jurisdiction of felonies is limited to cases wherein a plea of guilty is interposed. Some such courts have criminal jurisdiction only. The creation of some of these courts abolished the criminal jurisdiction of Justices of the Peace in the county wherein the court is located; of others abolished such jurisdiction in the city where the court is located; of others abolished it in the city and adjacent town or towns; of others did not at all affect such jurisdiction. Some such courts have original jurisdiction only, others also have appellate jurisdiction of justice court cases. Some have territorial jurisdiction throughout the county where they are located, some within the city

where located, some in a part of the county including but more extensive than such city. Appeals from some such courts go to the circuit court; from others to the supreme court; in one case to the superior court, which is only another municipal court; in many, cases of justice court jurisdiction are appealed to the circuit court, other cases to the supreme court; in one, cases brought to the municipal court on appeal are appealed to the supreme court, those originally brought there, to the circuit court. The salaries of the judges range from \$300 per annum to \$300 per month. Of some such courts only an attorney of record is qualified to be judge; of others anybody is qualified who is qualified to be circuit judge; of others any resident elector is qualified; of others, anybody, without any qualifications, may be judge; of others only one who is an elector, a free holder and an attorney in courts of record is qualified to be judge. Some such courts have justice court procedure, some circuit court procedure and others both, depending on whether the case is of justice court jurisdiction. In the act creating one such court, and I do not know but others, there is a provision that a defendant resident of the small city wherein the court is located or of the adjacent town may have a change of venue to that court from any other court upon motion and showing of such residence. In some counties the county court has municipal court jurisdiction and there are no municipal courts by name; in others there are one or more municipal courts and the county court exercises municipal court jurisdiction also. Some county courts have civil jurisdiction and no criminal, some criminal and no civil. Some counties have as many as three municipal courts. There are thirty-two counties of the state that have no municipal courts at all or other courts exercising special jurisdiction.

So numerous are the acts creating and affecting such courts that they are not included in the general statutes, and resort must be had to the session laws to ascertain their practice and jurisdiction. Many of the original acts have been many times amended. So frequently was the legislature called upon to create such courts by special act that to avoid this a general statute was passed in 1907 fixing the jurisdiction of municipal courts for localities not already having them and providing for their establishment on prescribed

action by the county board. It is perhaps worthy of note that, there has been only one attempt to establish a municipal court under this act, and the supreme court declared that attempt a failure for non-compliance with the statute.

These various limitations of jurisdiction and provisions for procedure and practice, and the difficulty of ascertaining them, do not render it impossible for local attorneys of pre-eminent ability to practice successfully in these courts. But the non-resident attorney who attempts to do so is quite likely to find himself upon the rocks. Perhaps the number of miscarriages of justice on this account is not large, even in the aggregate; but it would seem to go without saying that it would be better if something could be done towards systematizing or standardizing these courts, and their practice and procedure.

It is of course impossible to formulate a system of municipal courts or determine their proper functions without considering in connection with them both the county and the circuit courts and their proper functions and the practicability of these courts to handle the various kinds of judicial business. The circuit courts we not only have, but we can not get rid of them, for they are constitutional courts, and the constitution affords no means of abolishing them or even decreasing their number. And having the existing number of circuit courts it is to the public advantage to use them for the transaction of all business which they may efficiently handle. It is quite true that there are municipal courts, and also county courts, now exercising practically unlimited civil and criminal jurisdiction that are doing a considerable amount of business not cognizable by justices of the peace and doing it satisfactorily, just as satisfactorily as it would be done if it were done by the circuit court. But there is no need of two courts where one would do the work, and the circuit court could do all such work of all such courts if the latter were not in existence. Where a municipal or county court is doing any considerable amount of work of the nature now under consideration the circuit court is idle a good part of the time. Where the circuit is doing such work and there is a local municipal court with jurisdiction embracing it, the municipal court is lying idle practically all the time. There is not a city in the state



with a municipal court both possessing and actually exercising such jurisdiction the judge of which could not also do, in addition to his own work, all the work of the circuit court in the entire circuit wherein his court is located by giving all his time to judicial work. Municipal courts of this type are exercising jurisdiction which the constitution places in and contemplates shall be exercised by the circuit courts. They are inferior courts in name only. They are in fact courts of general jurisdiction. It matters not what we call them, municipal courts of this nature are practically circuit courts. Under the circumstances stated, either the circuit court or the municipal court is not doing its full measure of work. It is unjust to the taxpayers to compel them to maintain two courts where one will answer the purpose. There is to my mind great danger to the public in duplication of courts; and the consequent duplication of judges and duplication of clerks and other court officials that too often go with them. It is my belief that in many states there are from two to four times the number of judges and of courts that are reasonably necessary for the transaction of all judicial business. This is understating the matter, I believe, for some jurisdictions. I have no statistics at hand, but have seen them to the effect and I understand it to be a fact that the number of courts and the expense of maintaining the judicial systems in the United States, even in the longest settled and most thickly populated portions, are out of all proportion to the number of courts and their incident expenses for a like population under like circumstances in Great Britain and other European countries. The fact is we do not require of our trial judges, municipal in any case and circuit in some, the amount of work that should be required of a judge. If one holds a man's job he should do a man's work. A circuit judgeship is a man's job, and a municipal judgeship, at least of the sort we are just now considering, should be.

That the circuit judges are abundantly able to do this class of work of these municipal judges is borne out by the fact that in some of the largest circuits in the state they actually are doing it. The circuits of the state, excepting Milwaukee county, range in population from about 75,000 to about 125,000. The next largest in point of population,

that embracing La Crosse, has no courts within it except the circuit court exercising jurisdiction, either civil or criminal, above that of justices of the peace. The circuit judge of that circuit, Judge Higbee, although not a young or robust man, is able to transact without delay all business that comes before his court. Judge Clementson is one of the oldest judges in the state; his circuit is fifth in population; there a like situation exists and a like condition obtains. In some of the other larger circuits, existing municipal or county courts, although having extensive jurisdiction, are little called upon to exercise it, so that the circuit courts do practically all of the judicial work within the circuit except that ordinarily done by justices of the peace, and do it without being over-burdened. Where there are municipal or county courts having broad jurisdiction, attorneys, as a rule, prefer to bring their business in the circuit court, and do so bring it, except in very few instances.

Consideration of the amount of work actually done by the municipal courts bears out the view that the circuit judges are able to do this class of work we are now considering. The number of jury trials gives the best indication of the work transacted by the courts. So many of the cases classed as court cases are defaults, that take practically no time, that the number of such cases disposed of affords no proper basis for judgment as to time devoted or work performed. The number of days a court is in session is likewise no proper basis, for a minute is many times a day. The number of jury trials, civil and criminal, conducted by the principal courts of special jurisdiction during the year 1913, are as follows:

Superior court of Douglas county, eighteen of each; Municipal courts at Kenosha, four and one respectively; Green Bay, four and seven; Wausau, three and three; Appleton, eleven and seven; Janesville, two and five; Beloit, none and twelve; Manitowoc, three and four; Oshkosh, one and twelve; Racine, one and seven. County courts: Dodge, seven and none; Jefferson, seven and none; Winnebago, eight and five; Walworth, one and four; Waukesha, seven and none; but twelve jury criminal trials were had in the municipal courts of this county. How many of these trials were justice court cases does not appear. To me these figures clearly

indicate that the circuit courts of the state, under conditions as they now exist, are amply able, both in point of time and ability, to do all work done by the courts of the state exercising special jurisdiction, except trials of cases within or slightly beyond the jurisdiction of Justices of the Peace.

Another fact to be considered in formulating a scheme of Municipal Courts is, as first stated, the capabilities of the County Courts. There is not, I believe, a single county in the state where the County Judge does not have at his disposal ample time for the transaction of all business done by the Municipal Court located at the county seat, when there is one, and in fact for all the Municipal Court work done in the county. I can speak from my own observation made in most of the larger cities of the state—Racine, La Crosse, Superior, Madison, Wausau, Kenosha, Oshkosh, Appleton, Manitowoc and Fond du Lac. This is done, practically, in La Crosse, where the County Judge has criminal jurisdiction of Justices of the Peace, and in the year 1914 disposed of 354 such cases, including five tried by jury. I am sure the like could be done by other County Judges. And as said about Circuit and Municipal Courts, so about Municipal and County Courts—two courts should not be maintained where one is sufficient to do the work,—duplication of courts and of the incident expenses should be avoided.

It therefore seems to me that it is not only desirable and feasible to standardize Municipal Courts by giving them uniform jurisdiction and practice, but it is advisable in so doing to reduce the jurisdiction of those whose jurisdiction is most extensive rather than extend that of those of lower jurisdiction, and to lop off many useless ones and avoid the expense incident to them. What should be done, in my opinion, is to confer upon every County Court in the state limited criminal and civil jurisdiction. The criminal jurisdiction should include that now exercised by Justices of the Peace and perhaps extend to the lower grades of felonies, say to those in which the extreme penalty is one year in the state prison. The civil jurisdiction should extend to controversies involving claims of \$500, perhaps \$1000. In connection with this all Municipal Courts located at the county seats should be abolished. Municipal Courts should be left or created in cities of sufficient size remote from the

county seat of like civil and criminal jurisdiction with the County Court, or the County Judge should be required to hold court, for the disposition of civil and criminal business at such cities, as the circumstances may require. The jurisdiction and practice in both civil and criminal matters should be uniform in all such courts throughout the state. Where such a Court is located or sessions of the County Court provided elsewhere than at the county seat, the City Clerk and some designated police officer should be made ex-officio officers of the Court. Such a system would provide ample facilities for the disposition of all business, civil and criminal, that require a constantly sitting local Court for its proper transaction.

It may be admitted that in certain localities Municipal Courts with more extended jurisdiction than stated have been necessary in the past, in part owing to the former inflexibility of the Circuit Court system and resulting congestion of business in some circuits, and in part owing to deficiencies of the sitting judge, through ill health, great age or want of capacity from other cause. But in such cases the conditions necessitating such Courts do not now exist. So far as the cause for their creation has been inefficiency of the local Circuit Judge, from any cause; the need has passed with the passing of the particular judge, and with an efficient successor the new Courts have in most cases fallen into disuse. As to the other matters, the Circuit Courts are much more flexible than formerly. Instead of two terms a year, provisions exist for adjourned sessions whenever there may be occasion for them. Instead of cases not being triable until the next regular term unless noticed for trial ten days prior to the current term, they are now triable any time ten days after filing notice of trial, if the Court be in session. Circuit Judges are now allowed their expenses when holding court outside the county of their residence. So are Court reporters. There is therefore nothing to prevent or militate against holding Court in an outside county at any time that it may for any cause be advisable to do so. The Circuit Court is by statute at all times somewhere open for the transaction of business. It may as well be so open in an outside county as the county of the judge's residence, if occasion therefor shall exist. Temporary congestion of calendars in a circuit may now be

speedily relieved. The Circuit Judge in such case need only call upon the chairman of the Board of Circuit Judges for assistance, and some judge who is at leisure will be found to go to his relief. There are enough Circuit Judges to do the work of all the circuits, although the work is not evenly distributed. It is unjust to a community to require it to pay the salary of a Municipal Judge and a reporter for the transaction of business properly for the Circuit Court. The salaries of Circuit Judges and Court Reporters are paid by the state, and all communities are entitled to have the salaries of judges and reporters doing such work so paid.

I have heard it claimed that the Municipal Court affords a more convenient and less expensive method of transacting business, by dispensing with attendance of a large jury panel and allowing cases to be set for trial to suit the convenience of parties, counsel and judge. This is very well when there are but one or two cases for trial, but where there are from a dozen to fifty I doubt its practicability as a matter of convenience and its economy as a matter of expense. But if it be true that this procedure is preferable, then let it be adopted for the Circuit Courts. Any Court is but an institution for the transaction of judicial business, and it should adopt that method for transacting it which is best for the purpose, considering the convenience, efficiency and expense of the different methods.

So why the present system or lack of system of Municipal Courts; why the existence of rival Courts; why duplication of Courts and of Judges? The ideal judicial system no doubt would be one constantly sitting Court of general jurisdiction for every county and one of inferior jurisdiction for every municipality within the county as occasion therefore might exist. Such a Court of general jurisdiction might as well be called a Municipal Court or a County Court as anything else. The inferior Court might as well be called a Justice of the Peace Court as anything else. There's nothing in a mere name. But there is not a county within the state, excepting Dane, where the Circuit Court has jurisdiction of reviews of the rulings of all State Commissions, that has judicial business enough to require the full time of a Circuit Judge, and it is necessary under existing conditions, to include several counties within a judicial district. And the Justice

of the Peace system does not, except in rare cases where from custom lawyers of ability are chosen justices, answer the needs of the people for an inferior Court. If we had only one Justice of the Peace in each county required to hold Court in every city and village within the county as occasion should require, or one at each county seat and one at each city and village within the county of some considerable population, we might perhaps well dispense with all Municipal Courts by name. The jurisdiction of such justices could be extended beyond the present limits, even to that generally exercised by Municipal Courts. Such Justices would be as important, and as dignified and as capable judicial officers as are our present Municipal Judges. A Municipal Judge might as well be, for honor and dignity and emoluments, under such conditions, a Justice of the Peace as a Municipal Judge. It is the jurisdiction exercised and the work performed that make the Court.

Some such general result as I have suggested was considered desirable by the Joint Committee provided for by the 1913 Legislature to investigate and report on the organization and system of the Courts of the state. From the part had by this Association in the constitution of that Committee, its conclusions and recommendations may well be of weight with it. The Committee consisted of ten members, two appointed by the President of the Senate, three by the Speaker of the Assembly, three by the Governor from a list of ten furnished by the President of this Association, the President of this Association and the President of the Wisconsin Branch of the American Institute of Criminal Law and Criminology. Chief Justice Winslow was Chairman of the Committee. The Committee had a salaried Secretary, who collected and tabulated a large amount of data respecting the Courts of the state. From the information so collected and from their individual experiences the Committee arrived at some definite conclusions and made some recommendations respecting Municipal Courts. It was the unanimous opinion of that Committee that there should be in every county one or more Courts to exercise jurisdiction in criminal and civil matters such as are ordinarily exercised by Municipal Courts, viz.: of misdemeanors, violations of municipal ordinances and of civil controversies in

law and in equity involving claims of \$500, deducting payments and offsets, and of \$1000 in cases of judgments by confession. The jurisdiction recommended is that provided for Municipal Courts by the general Municipal Court Act. It was considered by the Committee that such jurisdiction should be exercised by the County Courts wherever practicable; that it would be practicable for County Courts to exercise such jurisdiction in nearly all counties; that where it is so practicable, the Municipal Court at the county seat, where existing, should be abolished; and that at cities remote from the county seat with sufficient population or business to warrant it, Municipal Courts should be retained where existing and established where not existing, and given like jurisdiction. It was recognized that a measure to carry out these views in full could hardly be passed. But bills were prepared by the Secretary and recommended by the Committee which, if passed, would to a considerable extent standardize the Municipal Courts of the state. One of these bills would confer on the County Court of all counties of the state not having Municipal Courts, the jurisdiction stated. Another would abolish in fourteen counties existing Municipal Courts having jurisdiction similar to that stated, and place the stated jurisdiction in the County Courts. Another would create courts of the stated jurisdiction in six cities not county seats now having Municipal Courts therein of similar jurisdiction. The effect of the last two bills would be, practically, to abolish the Municipal Courts at the county seats of the fourteen counties and retain the six existing Municipal Courts in these counties located elsewhere than at the county seat, the judges of the six such Courts abolished being made by the act judges of the six newly created Courts. The principal Municipal Courts of the state would not be affected by passage of these bills, nor would the Superior court of Douglas County, nor the County Courts now having more extensive jurisdiction than stated. The total change actually proposed by the Committee would seem to be not too great and the nature of it not too radical to be objectionable to anyone favoring any standardizing or systematizing of the courts of special jurisdiction. It would seem not to go far enough rather than to go too far.

What I have said of the opinion and recommendation of

the Joint Committee referred to indicates that the general suggestions I have made are in accord with their views. I wish in conclusion to show this accord somewhat more fully by quoting from the printed report of the committee. In their treatment of the subject of the Circuit Courts, in speaking of the hypothetical case of Circuit Judges re-elected after their powers have begun to fail with age, they say: "The situation sometimes becomes acute. The bar and people (especially in counties distant from the Judge's residence) become dissatisfied and procure the creation of local Municipal Courts which take the business away from the Circuit Court, leaving it a mere shell, thus adding to the multitude of Courts with varying and conflicting jurisdictions and involving a double loss,—first, the maintenance at state expense of a Circuit Court which does little business, and, second, the maintenance at county expense of a local Municipal Court crowded with business which should be done by the Circuit Court."

In their treatment of County Courts they say:

"Your Committee believe that the true solution of the problem of simplification and standardization of the inferior Court system (outside of Milwaukee County) must ultimately be found in vesting in the County Court of each county all judicial powers, civil and criminal, inferior to that exercised by the Circuit Court. In the great majority of the counties of the state at the present time the County Judge could easily, in addition to the probate business, transact the minor criminal and civil business of the county, and thus save the money of the taxpayers and furnish a Court of ability and strength for the trial of all cases, even though involving small sums.

"In counties where the volume of business might be too great for one Judge to transact (if there be any such) the Court could be easily divided into two branches and a second Judge elected. By this course dignity and importance would be added to the County Court, its bench would be more attractive to men of ability and the quality of its judges generally would inevitably improve; economy in the administration of the law would be attained and all questions as to the jurisdiction of rival Courts, which now frequently arise, would disappear.



"Your Committee appreciate that this plan would involve a very great change in the inferior Court system. They do not recommend that it be undertaken now in its entirety, but they wish simply to state their conviction that it is the ultimate logical solution of the inferior Court problem. They do recommend, however, that the first steps be taken in this direction by vesting petty civil and criminal jurisdiction in the County Courts in all counties which either have no Municipal Court at the county seat, or have only a Municipal Court exercising petty jurisdiction."

In their treatment of Municipal Courts the Committee say:

"As will appear from tables appended to this report, there are a great number of Courts throughout the state created by special act of the legislature. Many County Courts, too, have been given civil or criminal jurisdiction by special legislative enactment.

"The civil jurisdiction of these Courts varies from three hundred to five million dollars. The criminal jurisdiction is equally varied. The variations in jurisdiction are but typical of the variations in other respects.

"A study of them seems to show that the variations are not, as a rule, due to variations in local conditions. Two counties, similar in territorial extent, in urban and rural population, and apparent volume of litigation, may have special Courts of entirely different types. So far as can be determined, the creation of such courts is frequently due to the existence of conditions temporary in their nature. When such conditions change and the need for the court no longer exists it is sometimes abolished, and it sometimes remains, as an expensive and useless piece of judicial machinery.

"This is not true of all such Courts, however, for many of them perform a useful function in determining matters which should be disposed of promptly, and which require a constantly sitting Court to dispose of them. The Municipal Court for the trial of petty crimes is a necessity in every city of any considerable size. Many minor matters may be better disposed of by such a Court than by the Circuit Court. So far as this is true, the Committee feel that there should be Courts to do such work.

"But such Courts should not be permitted to usurp the function of the Circuit Court. Such litigation as may be properly disposed of by a Court that is not in continuous session should be disposed of by the Circuit Court. If it is necessary to create such Courts to dispose of such matters, the Circuit Court system has been found wanting. In some cases the creation of such Courts has been due to defects in the Circuit Court system which have permitted conditions to exist from which the easiest escape was the creation of a new Court to dispose of the business which should have been disposed of by the Circuit Courts. The Committee believe, however, that the proper corrective is the adjustment of the Circuit Court system, and not the creation of rival Courts. The Circuit Court is and should remain *the* Court of general original jurisdiction.

"Within the field legitimately belonging to local Courts, the Committee feel that an effort should be made toward securing all possible uniformity. Under our present scheme of special legislation with respect to such Courts the amount of statutory material has become so voluminous that it is no longer printed in the various revisions, hence it must be sought for through the various session laws. The advantage of uniform legislation with respect to such Courts is readily apparent when the extreme difficulty of collecting the legislation with respect to a single Court from a long series of session laws is realized. It is also conducive to the orderly administration of justice that our judicial machinery be as simple and as easily understood as possible. Unnecessary lack of uniformity tends, by producing unnecessary complexity, to defeat this end.

"Hence, while the Committee are not prepared to recommend the enactment of a uniform Municipal Court act which will apply to all of the Municipal Courts at present in existence, they do make recommendations with regard to Municipal Courts of petty jurisdiction which they feel will, if carried out, constitute a beginning, at least, in the desired direction of uniformity."

I submit that the establishment of some such system of Courts of special jurisdiction as suggested would be beneficial and is desirable. If no new Municipal Courts were estab-

lished by special act of the legislature, but all such as may become necessary in the future were organized under the general Municipal Court act, the first step towards the accomplishment of this end would be taken. If the bills recommended by the Joint Committee referred to were passed, a considerable way would be traversed towards ultimate standardization. Then if the general recommendations of the Committee were borne in mind and useless Courts lopped off or jurisdiction lessened as circumstances might warrant, we would ultimately reach a uniform system.

ADDRESS BY SENATOR TIMOTHY BURKE

ON THE SUBJECT

SHOULD THE VARIOUS MUNICIPAL COURTS OF  
WISCONSIN OUTSIDE THE COUNTY OF  
MILWAUKEE BE STANDARDIZED?

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DELIVERED JUNE 29, 1916.

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SENATOR BURKE: (After reading paper) Now I think Gentlemen, you will bear me out that the lack of uniformity in these Courts is largely and very largely, only a question as to the nature and extent of their jurisdiction. Isn't that true? Is not the procedure the same all the way through? Just as I stated before, Justice Court procedure in the Municipal Court is Justice Court procedure; and Circuit Court actions in a Municipal Court, are Circuit Court actions. That being true, why then should we go back and establish a rigid judicial machine, it may be expensive, and fasten it onto Burnette County and ask Burnette County to take it unqualifiedly, a great big massive piece of judicial furniture, with a high-priced attorney sitting at a big salary, while up in Green Bay the thing would fit in nicely. But you say now, in order to get a uniformity of these courts and strike a happy medium, let us put in a smaller piece of judicial machinery, it is too large for this county in the western part of the state, and it is too small for this fellow over in the northeastern part. Why, then, should we standardize these courts? I believe, Mr. President and Gentlemen, that there is enough of uniformity now in the Courts of Wisconsin, to make them as uniform as is conformable with the matter of expediting business. I believe they are just as rigid as they ought to be, and I believe at times they are just a little bit too rigid, and we ought at least to allow enough of expansion in the lower Courts,

among the mass of the people, to fit existing conditions. Taking the recommendations of the Committee appointed two years ago just as they are, at their own declarations and their own recommendations, they still admit inadvertently, or indirectly, as you might say, that there are peculiar conditions to each county, which require a certain amount of elasticity in the judicial machinery of the state. They admit that in some instances the Municipal Court jurisdiction shall be vested in the County Judge. I believe that can be done very economically and practically, and be very practical in several of the counties of this state, but in the larger counties—and pardon me if I refer to Brown County so often, but I use it as an example—it could not be possible for the County Judge of Brown County to handle all the work of the Municipal Court, and handle all the work of his own Court, because our County Judge has about all the work he can attend to up there now. The Municipal Court is busy 313 days in the year, exclusive of the few legal holidays, in which they are not allowed to sit. So that, taking the recommendations of the Committee themselves, that these things could be taken care of by vesting certain powers in the County Court, there is a call and a demand for some local elasticity in these inferior Courts. Now we should not abolish these, we should not put these under one uniform law, for the mere sake of getting them uniform. We should not put them in there lest their functions might trespass on a Court of greater jurisdiction, because the Courts after all, Mr. President and Gentlemen, are merely the servants of the people. They are merely the machinery in which those who cannot adjust their rights in the family circle or in the home, or in the business affairs of the day, go into court and settle their differences, and they should at all times under the constitution, and under the proper legal restrictions, be still the servants of the people. I believe that the very fact that these Courts were brought into existence, that there is a slight lack of uniformity, as I said before, only on the nature and extent of the jurisdiction, that the mere fact that there was a demand from that particular county or that particular community, for the establishment of a Municipal Court, is sufficient justification of the present system; and I believe further that if there is a high-priced man in a Court doing very little work, that the

vigilant watch-dogs of the treasury in the several county boards of the counties of the state are sufficient to discover those things, and having discovered them they will be clamoring at the doors of the next legislature for the repeal of that particular law.

Gentlemen, those are my sentiments, my opinion on these matters, and being a member of one of the Committees which had these matters in charge a year ago last winter, and having been unfortunate enough to take part in turning down a lot of probably good recommendations, and some that we didn't think just right, still, as I said before, it was our best judgment at that time that we accepted some of the recommendations of this Committee, and rejected others.

Coming back to the remarks that I made at the opening, that human judgment cannot be measured by a fixed standard, I think that probably expresses all I have got to say on this question, and while I am not at all anxious that anybody should ask me any questions in regard to the remarks I have made, I would be very glad, if anybody has any particular question to ask, to make an attempt to answer it. With those remarks, that closes my discussion of this matter.

## ADDRESS BY ROY P. WILCOX

ON THE SUBJECT

### TO WHAT EXTENT SHOULD THE SUPREME COURT INTERFERE WITH CUTTING DOWN DAMAGES IN CASES WHERE THE VER- DICT OF THE JURY HAS MET THE APPROVAL OF THE CIRCUIT COURT?

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DELIVERED JUNE 29, 1916.

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The question presented assumes, by its phraseology, that the Supreme Court should "interfere", or, at least, review, to some extent, the damages in cases where the verdict of the jury has met the approval of the Circuit Court. We might, therefore, with propriety, confine our discussion wholly to the question of when and to what extent the Supreme Court should exercise its conceded right in that respect. An examination of many decisions, however, has shown that there has always been much confusion and conflict among the Courts on the whole subject of judicial review of jury findings, especially on the subject of damages. It may, therefore, be well within the purview of the question to discuss first quite generally the attitude of the Courts on the entire subject involved.

It will be found, from an examination of the cases, that it was formerly held by many Courts, and was, indeed, a sort of tradition among the members of the bar, that the damages assessed by a jury were beyond control by the court, except in the one instance that the Trial Judge might set aside a verdict, including the damages, if it were clear that the verdict evinced passion or prejudice. But it was said that the Judge could never interfere with the amount of the damages found so as to decide what sum was proper in any particular case, because, by so doing, he substituted the finding of the Judge

for the verdict of the jury, and that this violated the state and federal constitutions, providing for the inviolability of jury trials in all cases at law.

Section 5, of Article I of the Wisconsin Constitution is quite typical of the provisions of state Constitutions, generally, and reads:

"The right of trial by jury shall remain inviolate; and shall extend to all cases at law, without regard to the amount in controversy; but a jury trial may be waived by the parties in all cases in the manner prescribed by law."

The 7th amendment to the federal Constitution reads:

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law."

The Courts gradually got away from the notion that the right of reviewing the damages was an interference with the right of trial by jury, or that it, in any manner violated the constitutional provisions referred to. They did so by this line of reasoning. They said that if a Judge might, even at common law, as was undoubtedly the case, set aside a verdict for passion or prejudice, as indicated by the excessiveness of the damages found, the Court might, with equal propriety, if it were clear that the verdict was otherwise unimpeachable and the record free from error, grant a new trial on account of the excessive damages, unless the party in whose favor the damages were found would remit the excess. In fact this was nothing more than setting the verdict aside absolutely and continuing to set successive verdicts aside if they appeared to be excessive or beyond the amount which the Court thought was reasonable under all the circumstances. This rule was quite easy of application in cases where the right to damages could be measured with certainty, as in the case of contracts, but was troublesome in tort cases or others, where the damages were wholly unliquidated. On this account the rule was only very gradually extended to these actions. At first merely to cover cases where the trial Court had allowed the jury to consider improper items of evidence bearing on the question of damages and the Appellate Court ruled that such evidence



was erroneously received, and affected only the amount of damages, and, therefore, that the party should remit a sum large enough to clearly cover all damages which could reasonably have been allowed on account of such erroneous evidence. The Courts finally applied the rule to all cases, examining carefully the record, and, if the damages found were deemed to be excessive, they determined on a sum as low as any fair jury, properly instructed and seeking to do its duty, would, in any reasonable probability, find, and gave the plaintiff an option to take judgment for that amount, or awarded a new trial.

The Supreme Court of Wisconsin has, in such cases, given both parties an option to close the controversy by giving the defendant the right, within a limited time, at his option, to allow judgment to be entered against him for the highest amount which the court determines an unprejudiced jury, properly instructed, would probably find, and, in the event that the defendant fails to exercise such option, then gives the plaintiff an option, within a certain time, to take judgment for the lowest amount which the court determines an unprejudiced jury, properly instructed, would probably find, and, in the event that neither party exercises his option within the limited period, awards a new trial. (See *Beach vs. Bird & Wells Lbr. Co.*, 135 Wis. 550).

The basic objection urged to all these various rules has been that they violate the constitutional right of trial by jury, in that they substitute the judgment of the Court for that of the jury on the subject of damages. It is argued in such cases that it is not within the province of the Court to assess the damages; that when the Court sets aside any part of the verdict, it destroys its integrity; that the Court has no right to set itself up as a trier of facts and render another and different verdict from the one rendered by the jury; and that the only logical course is to either let the verdict stand as found, or to set it aside in its entirety.

It will be found, however, that practically all of the late decisions in most of the Courts of this country and England have adopted some rule under which they can bring an end to a controversy without granting a new trial absolutely. Some have based the rule on one line of reasoning; some on another; but nearly all have worked out some theory of end-

ing the controversy without granting repeated new trials. It has usually been done by making a new trial conditional on the failure of one or both of the parties to enter judgment for an amount considered to be free from excessiveness. (See *Sutherland on Damages*, 3d Ed., Sec. 460, note to *Padrick vs. Great Northern Ry Co.*, L. R. A. (N. S.) Vol. 1915 F.).

The note in the L. R. A. referred to gives the largest collection of decisions I have seen on the subject of damages, and classifies them elaborately on the basis, among others, of whether held excessive or not, and specifies the extent and kind of injury with great particularity.

As to the constitutionality of the practice, we cannot spend time to review all the cases and the reasoning of the Courts. A glance at the leading ones in the United States Supreme Court and the Supreme Court of the State of Wisconsin must suffice.

In *Northern Pacific Ry. Co. vs. Herbert*, 116 U. S. 642, a verdict of \$25,000 was rendered and the trial Court awarded a new trial on the ground that the damages were excessive, unless the plaintiff remit \$15,000. He did remit that sum, and judgment was given for \$10,000. The Supreme Court said unanimously, in an opinion written by Mr. Justice Field: (646)

"The exaction, as a condition of refusing a new trial, that the plaintiff should remit a portion of the amount awarded by the verdict, was a matter within the discretion of the Court. It held that the amount found was excessive, but that no error had been committed on the trial. In requiring the remission of what was deemed excessive, it did nothing more than require the relinquishment of so much of the damage as, in its opinion, the jury had improperly awarded. The corrected verdict could, therefore, be properly allowed to stand".

In *Arkansas Cattle Co. vs. Mann*, 130 U. S. 69, the Court was asked to reexamine the constitutional question as to whether making the decision of a motion for new trial depend upon the remission of a part of the verdict is, in effect, a reexamination by the Court, in a mode not known at common law, of facts tried by jury, and, therefore, a violation of the 7th amendment of the Constitution. The Court, in a unanimous opinion by Mr. Justice Harlan, held that it was

not, adhered to the rule previously announced, and, following *Doyle vs. Dixon*, 97 Mass. 208, 213, held in the very language used in that case: (73)

“When the damages awarded by the jury appear to the judge to be excessive, he may either grant a new trial absolutely, or give the plaintiff the option to remit the excess, or a portion thereof, and order the verdict to stand for the residue.”

The court refers to, as sustaining this rule, many other cases and the numerous authorities quoted in *Sedgwick on Damages*, 6th Ed. 765, note 3; 1 *Sutherland on Damages*, 812, note 2; and 3 *Graham & Waterman on New Trials*, 1162.

At the October, 1913, term of the Supreme Court of the United States, the foregoing cases were reviewed and the decision there made was approved, adhered to and followed. (See *Gila Valley &c. Ry. Co. vs. Hall*, 232 U. S. 94, 104).

The Wisconsin Supreme Court, in *Potter vs. Ry.*, 22 Wis. 619, and some other cases, seemed to take the position that the Court could not interfere with the damages found in a verdict, except to grant a new trial absolutely, but this rule was disapproved in *Corcoran vs. Harran*, 55 Wis. 120. In an opinion by Justice Cassoday in that case, speaking for the unanimous Court, he says that the authorities are not uniform on the question but follows the rule announced by Mr. Justice Storey in *Blunt vs. Little*, 3 Mason, 102, citing numerous authorities to sustain it, and using this language: (127)

\* \* \* “where the damages are clearly excessive, the Trial Judge may either grant a new trial absolutely, or give the plaintiff the option to remit the excess, and in case he does so, order the verdict to stand for the residue. Certainly the practice will tend to promote justice and lessen the expense to litigants and the public. Besides, the allowance of such option is no more of an exercise of arbitrary power by the Trial Judge than it would be for him to set aside the verdict absolutely upon the sole ground that it is excessive, and, then, in effect, direct a jury to bring in a verdict for a smaller sum, but not in excess of an amount named by the court \* \* \* ”.

In the later case of *Baker vs. Madison*, 62 Wis. 137, Mr.

Justice Lyon writing the opinion for the unanimous Court, followed *Corcoran vs. Harran*, and says, in effect, that changing the rule in the Potter case is merely changing a rule of practice; and that it does not usurp the functions of the jury to allow the remission of the excess of damages found by the jury and give judgment for the proper amount. And further that if it is a departure from the rule announced in the Potter case, as it is merely changing a rule of practice, it does not interfere with the maxim *stare decisis*.

The Wisconsin Court has uniformly followed the practice ever since, and has extended it somewhat as heretofore indicated. The following are a few of the many cases where the rule has been applied:

*Baxter vs. Ry. Co.*, 104 Wis. 307, 337.

*Hocks vs. Sprangers*, 113 Wis. 123, 140.

*Rueping vs. Ry. Co.*, 123 Wis. 319.

*Heimlich vs. Tabor*, 123 Wis. 565, 571.

*Willette vs. Rhinelander Paper Co.*, 145 Wis. 559.

Mr. Justice Marshall, in *Baxter vs. Ry. Co.*, *supra*, as well as in later cases, notably *Hocks vs. Sprangers*, *Rueping vs. Ry. Co.* and *Heimlich vs. Tabor*, cited above, placed the practice on what he says is a sound logical basis, and made it applicable to all cases, announcing the rule, in substance, that a new trial should be granted in all cases of excessive damages, unless the plaintiff, at his option, desires to enter judgment for a sum which, in all reasonable probability, will not exceed the amount which a jury will ultimately give to him.

In *Heimlich vs. Tabor*, *supra*, in answer to the argument that the rule violated the constitutional right of trial by jury, Mr. Justice Marshall pointed out, very forcibly, that this is true "unless the amount of the excess or the proper amount of the verdict is determined upon some basis which fairly takes the judgment of the jury for the guide, instead of the independent judgment of the Court"; and in *Beach vs. Bird & Wells Lumber Company*, 135 Wis. 550, our Supreme Court approved the method adopted by the trial Court in his opinion, where he said:

"The only way suggested for solving this question is by ascertaining what such juries have done in similar cases and what amounts have been held to be excessively

large or small. When these two limits have been arrived at, reasonable doubts being resolved in favor of making the minimum small and the maximum large, the Court then gives \* \* \* the option \* \* \* ”.

Justice Timlin, writing the opinion in this same case, disagreed with the method of arriving at the proper amount, and suggests that, if the rule just stated does not invade the province of the jury, “I do not see how it can be said that there is such an invasion where the Court estimates the minimum of such damages which an ideal, unprejudiced jury would award to the plaintiff, and makes his grant of a new trial conditional upon the defendant’s refusal to accept a verdict for that sum”. “The minimum should be ascertained upon a consideration of what the Trial Judge considers the minimum, and not by a comparison of what juries have actually done in similar cases \* \* \*. This mode of ascertaining the minimum will inevitably destroy the rule itself, because the minimum ascertained in this way will be constantly increasing, and what is termed the minimum, will be really the actual and ordinary damages which an unprejudiced jury usually ascertains and awards, which is, in truth not the minimum, nor the maximum, but a sum between both. So that the rule will finally result, as in the case at bar, in giving the plaintiff an option to take a new trial, or take judgment for the actual average amount of his damages, as near as such can be ascertained, while the defendant’s option will be to submit to a judgment in excess of a fair admeasurement of the plaintiff’s damages”.

It is difficult to see the distinction between Justice Timlin’s ideal jury and the Court which would give expression to the ideal, and if there is no such distinction, it would be the judgment of the Court as to the proper amount of damages, rather than the judgment of the jury. The rule adopted by the trial Court in the case referred to, and followed by the majority of the Supreme Court, seems to rest upon a more logical basis and to more clearly avoid invading the province of the jury.

It is believed that reason and the weight of authority both support the view that the practice adopted, as indicated by the foregoing decisions, does not, in any real sense, violate the

federal or state constitutional provisions by invading the province of the jury.

It appearing, therefore, that the Courts have power to follow the practice indicated, the further question arises: Is it in the interest of justice and should it be followed for that reason?

The language of our own Court already quoted from the decisions in *Corcoran vs. Harran, supra*, and *Baker vs. Madison, supra*, as well as the language used in many other Wisconsin cases, indicates the beneficial results following from the practice by way of terminating litigation, saving expense, making justice certain, prompt and without delay, and rendering it unnecessary to purchase it through expensive and unnecessary litigation. All of these benefits being embraced within the language and meaning of Section 9, of Article I of the Wisconsin constitution.

Mr. Justice Bardeen, in *Crouse vs. C. & N. W. Ry.* 104 Wis. 473, said: (486)

"Upon the precedent established in *Baxter vs. C. & N. W. Ry.*, ante, it is proper, *in the interest of justice, and to end litigation*, for this court to fix a sum to be deducted from the recovery that will leave it reasonably certain that no injustice is being done".

It is obvious that in order to fully meet the spirit of Section 9 of Article I of our constitution ("Every person is entitled to a certain remedy in the law \* \* \* He ought to obtain justice freely and without being obliged to purchase it, completely and without denial, promptly and without delay, conformable to the laws"), repeated new trials should be avoided. It certainly is good public policy to end controversies by the wise application of this rule of practice, which interferes with no constitutional right of any party to an action, and which usurps none of the functions of one branch of the Court. The language of the Courts in all the cases indicates that their sole purpose is to bring an end to litigation, and it can fairly be said that the application of the rule in all the cases examined was highly beneficial in that particular.

In Wisconsin, more than in most other states, it is proper that trial and Appellate Courts should review the subject of damages, because of Section 2878 of the statutes, which provides:

"The Judge before whom the issue is tried may, in his discretion, entertain a motion, to be made on his minutes, to set aside a verdict and grant a new trial, upon exception, or because the verdict is contrary to evidence, or for excessive or inadequate damages. \* \* \*".

This section is the same as it was in Sec. 174 of the original Code, and also in Sec. 16 of Chapter 132 of the Revised Statutes of 1858, except that Sanborn & Berryman, in revising the 1889 statutes, added the words "or inadequate" before the word "damages", the statute before that simply giving the Court the right to grant a new trial for excessive damages, the addition merely giving the power to grant one for inadequate damages. The statute has remained as quoted ever since the revision of 1889.

It will be seen that the right to review the damages is given to the trial Court to the same extent by this statute as the right to set aside the verdict because it is contrary to the evidence, and to the same extent that it had the right to set it aside because of passion or prejudice under the common law rule.

For some reason our Court seems not to have given effect to this specific provision of the Code in the early cases. It will be observed that it is not referred to there, but the decision was based upon a consideration of the question on a purely common law basis. Later on, effect was given to the provisions of this section in *Willette vs. Rhinelander Paper Co.*, 145 Wis. 559, (see also the dissenting opinions of Marshall, J., in *Monaghan vs. N. W. Fuel Co.*, 140 Wis. 457, and *Ludvigson vs. Ship Building Co.*, 147 Wis. 34), and now it undoubtedly has full force and effect in our Supreme Court, and is fully kept in mind by the trial Courts as well.

The question remains: To what extent should the Supreme Court review the determination of the jury on the subject of damages where such determination has been approved by the trial Court?

Our statute, Section 3070, provides:

"Upon an appeal from a judgment, as well as upon a writ of error, the Supreme Court may review any intermediate order or determination of the Court below, which involves the merits and necessarily affects the judgment, appearing upon the record transmitted or

returned from the Circuit Court, whether the same were excepted to or not”.

Section 3071 provides:

“Upon an appeal from a judgment or order or upon a writ of error the Supreme Court may reverse, affirm or modify the judgment or order, and as to any or all of the parties; and may, if necessary or proper, order a new trial; and if the appeal is from a part of a judgment or order may reverse, affirm or modify as to the part appealed from. In all cases the Supreme Court shall remit its judgment or decision to the Court from which the appeal or writ of error was taken, to be enforced accordingly; and if from a judgment, final judgment shall thereupon be entered in the Court below, in accordance therewith, except where otherwise ordered \* \* \*”.

These sections give the Appellate Court broad power to award a just judgment in every case, and, even though the verdict has the approval of the trial Court, the judgment may be reviewed on the whole record on appeal to the Supreme Court and every matter necessarily affecting it, including the verdict, may be considered for that purpose.

Our Supreme Court, however, holds that a presumption of correctness attaches to the judgment of the trial Court, and, where it appears that the trial Court has proceeded legally and has exercised the discretion vested in it, its judgment will not be disturbed on appeal unless it is clearly erroneous. And where a decision was made in the discretion of the trial Court, it will not be reversed unless there was an abuse of discretion.

Applying this rule to the subject of damages found by a jury and approved by a trial judge, it would seem to leave little for the Supreme Court to review, except the question as to whether the trial Judge, in passing on the damages assessed, allowed erroneous elements of damages to be considered, or refused to exercise his discretion under the law and the statute, or manifestly failed to consider undisputed facts controlling the subject, as shown by the record, or otherwise abused his discretion.

This is the rule followed by our Supreme Court in the later cases of this kind, and it goes about as far, yet no far-



ther, than the Court should go in the interest of justice under the statutes of the state.

*Monaghan vs. N. W. Fuel Co.*, 140 Wis. 457, 465.

*Lomoe vs. Superior Water, Lt. & Pr. Co.*, 147 Wis. 5, 15.

*Ludvigson vs. Ship Bldg. Co.*, 147 Wis. 34, 39.

*Scieczinski vs. Filer & Stowell Co.*, 147 Wis. 533.

*Koepp vs. N. E. & S. Co.*, 151 Wis. 302, 322.

*Kinziger vs. Ry. Co.*, 156 Wis. 497.

*Engen vs. C. V. Ry. L. & P. Co.*, 156 N. W. (Wis.) 460, 462.

ADDRESS BY P. H. MARTIN

ON THE SUBJECT

TO WHAT EXTENT SHOULD THE SUPREME  
COURT INTERFERE WITH CUTTING DOWN  
DAMAGES IN CASES WHERE THE VER-  
DICT OF THE JURY HAS MET THE  
APPROVAL OF THE CIRCUIT  
COURT?

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DELIVERED JUNE 29, 1916.

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Ladies, and Gentlemen of the Bar. I put my own interpretation upon the question assigned, and I find that I am not very much opposed to Mr. Wilcox. In fact in the Sprangers case, and in the Beach case, I invoked the rule myself, and, having done so, I feel estopped to question the validity of the rule.

The practice and the power of the Court to say how much the plaintiff should remit when an award is challenged as excessive, is so well established that there is little use in protesting against it. My own instinct, if not judgment, is that it is a judicial development, but some judicial developments are very wholesome things in the administration of a system of jurisprudence founded upon common law principles. The question to which I desire to call attention specifically, is not the power of the Court to determine a verdict excessive. I think we must all recognize the fact that such power is unquestionably vested in the Court and rightly so. Neither is the question that I would discuss, the power of the Court to determine a verdict excessive when the question of excess is mixed up with extraneous considerations, such as improper remarks of counsel, foreign elements, erroneous instructions to the jury, or anything of that kind. The thought I have in mind, is this: looking squarely at the award of damages on the one hand, and at the injury to the plaintiff, or injured

party on the other hand, by what rule or by what test or yard stick shall the Supreme Court determine in its right that the award is excessive? I protest against the tendency of the Court going to sea on that question, without a pilot and without a compass. There is no safety in my judgment in equitable considerations. The only safeguard to any judicial conclusion lies in some accepted and recognized principle. I have no fault to find with our Court. I think whether they recognized the rule recently or not, in all cases there is general recognition of the fact that the Court ought to have some guide. There are some exceptions, but this is true: Beginning with *Burchard vs. Booth*, in the 4th Wis., followed almost immediately, perhaps at the same session of Court, by *Cramer vs. Noonan*, there was laid down in Wisconsin the test whereby a Court, whether it be the Supreme Court, or the trial Court, could reach a safe conclusion as to the question:—Is the award excessive, and that test was, can the Court clearly see that the award evinces passion, prejudice, bias, ignorance or other improper motive. Now gentlemen of the bar, that is a pretty wide rule. It would seem to afford to the trial Court, and it would seem to afford to a Court of review, a wide latitude, sufficient indeed, to meet the ends of justice, better, I think, than equitable considerations. That rule was not new to Wisconsin, is not new in other jurisdictions. It was nearly the universal rule. Indeed, you would find few rules that had less exception, and had more universal recognition. In some jurisdictions it was stated in other language. Unless the award is so great as to shock the sense of justice, the integrity of the award may not be questioned by the Court of review, is the way it is stated. What is wrong with that rule as expressed in the language I first put it, as found in the Booth case and continued in every case where the question was consciously recognized down to the Monahan case, and what is wrong with the rule that the integrity of the award of damages shall not be questioned unless it is so large as to shock or offend the sense of justice? The responsibility for an award of damages larger than the reviewing Court would award, does not rest with the Court. The jury is a coordinate branch of the Court. In the genius of our system of jurisprudence, it is intended that responsibility in this shall rest with the jury and not rest with the

Court, and that the one shall not invade the province of the other. Now Gentlemen of the Bar, you can review all the cases in Wisconsin from the first word I find in recognition of the rule as stated, down to the Monahan case. I think that there are some forty or more of them, where the rule is expressly stated, and in the others it is stated by implication in this language:—This Court under the rule adopted here, can not interfere with the verdict of the jury. But in some thirty-five or forty cases, maybe more, it is expressly restated; unless the award is so great as to evince passion, prejudice, bias, ignorance or other improper motives, the award must stand. And why not? Is a Court of review more capable of passing upon the extent of the injuries of a man than is the jury? Does the diversity in award sustained in different jurisdictions lead to the conclusion that we might safely substitute for the responsibility and judgment of the jury the responsibility and judgment of a Court of Review that should have on this question only appellate jurisdiction?

Turning to the note that my friend, Mr. Wilcox, speaks of, you will find the widest divergence of opinion by review Courts. You will find that for the loss of an eye the Wisconsin Court, as indicated in the Olwell case, says, \$6,000 is about all that would be permitted to stand. In a recent case, in a dissenting opinion by Justice Marshall, reviewing the award permitted for the loss of an eye in certain cases, and harking back to the Compensation Act, it is set at about two to three thousand dollars. Beyond that would challenge attention, and much more than that would invite the interference of the Court. Now gentlemen, we know as a matter of fact that no man can say that \$6,000 is a legitimate award for the loss of an eye, and that \$7,000 would be excessive, or that \$8,000 would be excessive, or that \$10,000 would be excessive. In some jurisdictions I find, passing from the ideal of damages indicated by the Wisconsin Court, as high as \$14,000 for the loss of an eye; \$12,500 for the loss of an eye, and for the loss of an eye with an impairment of the other, I find even a greater sum sustained by Courts of review. If it be said that there is a diversity then of opinion, as between awards by juries, the same thing can be said of Courts of review. It only emphasizes, as I see it, the duty of a Court of review, to adhere to its own responsibility and

right, and to give the award of a jury the full force and effect that it was intended to have in the philosophy of our jurisprudence. If there was anything that could possibly be settled beyond room for upturn by judicial action, it was the recognition of this rule of passion and prejudice as the test. I will not read the rule, but I will call your attention in passing, to the consistency of the court from its earliest history to the Monahan case, and then I will take up what seems to me to be a dangerous tendency, a new thought suggested in the dissenting opinion in the Monahan case, and persisted in since; and I call your attention to the significant silence of the Court concerning the rule ever since the decision of the Monahan case. You may draw your own conclusions as to whether or not it means an abandoning of the rule. The old rule is found stated in the Potter case, and in these cases that I call your attention to, the rule is stated explicitly. There isn't any implication about it. In the 22nd, the Potter case; the 23rd the Smith case; the 26th the Weisenberg case; the 28th, the Goodno case; the 29th, the Spicer case; the 32nd, the Patten case; the 36th, the Craker case; the 38th, the Stewart case; the 50th the Berg case; the 50th, *Bowe vs. Rogers*; the 51st, the Delie; 55th, *Corcoran vs. Harran*; 59th, the Bramer case, and in the 62nd, *Baker vs. the City of Madison*. There is in the Baker case a rather peculiar disposition of the case; and I will call your attention to it. There had been two prior awards of damages, \$3,000, \$2,500, then \$6,000. The rule is not mentioned in *Baker vs. City of Madison*, but in a later case, in an opinion of Judge Newman, he says that the meaning of the Court in the Baker case was evidently misunderstood, and that the Baker case is a recognition of the rule. It is said in the Baker case: "We adjudged it excessive, not so much because that is our deliberate individual judgment (as it is) but in deference to the verdicts of two juries who awarded but one-half or less than one-half of the sum awarded on the last trial." The thought occurred to me as to what the Supreme Court would say if the plaintiff on the third trial of the Baker case, had offered in evidence, and it was received, the awards of the two prior juries as an aid or a guide to determining what was the just award to make on the third trial. If that was not—and clearly it would not be legitimate consideration for the jury—I deny

the right of our venerable judges to take any such facts into consideration. Perhaps it won't do any good, but we will deny the right. (Laughter). However, I have no doubt they are so fertile in philosophy that they would say,—well now, that is not the reason we considered it at all. We considered it as a sort of an analogy, and as a sort of a guide to our discretion. The Court did the same thing in *McLimans vs. the City of Lancaster*, where there had been a prior award of damages. The last verdict was for \$8,000. The Court required the plaintiff to remit \$3,000 as a condition of affirmance. In this case on a former trial, plaintiff's damages had been assessed at \$2,000, and the Court in referring to its action in *Baker vs. City of Madison, supra*, on that point said:

"In the present case the difference in the verdicts is far greater. All the members of this Court are dissatisfied with it. Besides, since the last trial of this case, Chapter 454, laws of 1885, amending Section 1339, revised statutes, has been enacted, so that the amount recovered by any person for such damages or injury, shall in no case exceed the sum of \$5,000."

Another element of illegitimate consideration. What difference did it make if the law had been changed, so that the limit of recovery was fixed at a definite sum, as bearing upon a case where the damages had been assessed, and which was being reviewed, after the law had been changed? If as a matter of public policy, in an action created by statute, the legislature saw fit to say the recovery shall not exceed so much, regardless of the injury, I fail to see why that thought should be invoked as an equitable consideration to determine whether or not an award of damages is or is not excessive. I say it is a false light. It is not a true yard stick or just guidance for the judgment of any Court.

Then again in the Ferguson case, in the Hinton case, in the 65th, the Heucke case in the 69th, and in the Tolliver case in the 71st, the Heddles case, which you all remember, in the 74th, the Smalley case in the 75th, the Neilon case in the 75th, the McDonald case in the 78th, the Waterman case in the 82nd, the rule is recognized. Perhaps the Waterman case is worthy of some reflection. On a former trial damages in this case had been assessed at \$22,500, and the award under

review was \$25,000. Delay of six years had been caused by the defendant company by wrongfully removing the case to the Federal Court. In view of this situation, judgment was allowed to stand if the plaintiff remitted \$5,000. The language of the Court is worthy of note. At page 637 it is said:

"Were it not that the case has been twice tried, in both instances with the same result on the question of liability, and that the evidence is such as to justify the belief that the rights of the defendant on that question were not prejudiced by these irregularities, we would feel bound to reverse the judgment absolutely on this ground, and grant a new trial."

That was for improper remarks of counsel.

"We entertain no doubt that this improper appeal tended materially to increase the verdict."

It is then said that the verdict is an unusually large one and one that would not be rendered against a natural person. The court continued:

"We are aware of the intrinsic difficulty of dealing with such a question upon any certain or satisfactory rule."

If that is true, then leave it to the jury where it belongs.

"It is entirely a pecuniary question as to what amount of compensation is to be allowed to stand as damages in a practical and reasonable administration of the law. The fact that there is no definite rule for arriving at the amount of damages in such cases shows the importance of guarding the minds of the jury from all misleading and improper influences and appeals."

That very fact shows that if it is important to guard the minds of the jury against improper element and improper appeals, it is also important to guard the mind of the Court of review against the idea that it is a Court of original jurisdiction, or that Section 2878, or 2405m provides any criterion whereby to determine the question of excessiveness. I shall come to that later. These two sections do not attempt to furnish any key or any light whatsoever, whereby to determine or reach the conclusion that a verdict is or is not excessive. 2878 perhaps declares but common law. It is suggested in one opinion that the Court had no power to deal before that time with an inadequate verdict. Whatever the fact may have been, Gentlemen of the Bar, since 2878 was

enacted, the Court has had ample power to deal with a verdict because excessive, or because inadequate; but I deny that 2878 affords to the Court any yard stick whereby to proceed and determine whether or not a specific award is excessive. That thing must be reached by the rules that had obtained from the earliest down to the Monahan case, and 2878 has stood concurrently with this rule from way back in the early history of the state. The idea of resurrecting 2878 at this late day, as in the Monahan case; and subsequently 2405m, and sort of confusing the idea that these rules create a new power in the Court, or light whereby to measure damages, is misleading in my judgment. The power is there, but 2878 was never considered by the Court as a guide to the question, is the award excessive or is it inadequate? Well, in all these cases, then, down to the Monahan case, and there is no period of time, there is no single session of Court where the rule had not been iterated and reiterated on several occasions; the rule is recognized that I contend should obtain in the review of the question:—Is the award excessive? How shall the judicial mind reach that conclusion? What shall be the yard stick? Shall it look at 2878 and 2405m and say, Oh, these are sections that enlarge our power? That increase our discretion? That make us a Court of appellate jurisdiction on this subject? No. These sections have no such function, and I challenge anyone to read them and find any such idea or purpose in these sections as has been claimed for them. Now another idea that has been injected since the Monahan case, that I think is of dangerous tendency and new thought, is this: in several instances I find the Court has referred in discussing the question of damages, to the Compensation Act; not saying in so many words that the Compensation Act is a perfect yard stick or measure of damages, but undoubtedly invoking the pittance—and I say it advisedly and repeat it—the beggarly pittance that the Compensation Act affords to an injured man; invoking that as some measure or some test whereby to determine whether or not an award is excessive. Then again invoking the idea that the Court must sort of stand between the injured and the ultimate consumers of the product of the industry, wherein the injury occurs, and in some measure protect that body against an award of damages that would be, if nothing more than a fair recompense to the



injured party, a serious burden upon the party who must pay him. We cannot get away, Gentlemen of the Bar, from fundamental principles, without danger. If I am injured I have a right to recompense; if my injury is wrongful, at the hands of the guilty party. I have a right to just recompense without any regard to who will pay it, or how burdensome the judgment may be. That is an instruction that is repeatedly given in charges to the jury. The jury are told—you have nothing to do with the question of parties here. You have nothing to do, unless it be a case where punitive damages may be properly awarded, with the wealth of the parties here. All you have a right to consider, Gentlemen of the Jury, is this:—What will justly recompense the plaintiff for his injury? I do not mean to say that it is a question how much would I take for my right arm, or how much would I take for my right eye. It remains, as the Court has said, a practical question, but that practical question must remain with that practical body, the jury, and it is just as practical a body, just as safe a body, just as likely to result in a proper administration of justice, one that will approximate natural justice, as if these damages were being assessed by five, six, three or seven judges, I care not how learned, I care not in what quarter of the country they sit; and the decisions demonstrate that fact.

Now since the Monahan case, I will call your attention to a few of the leading cases. I won't read the decisions except one or two of them to show the drift. I find no case since the 140th where the ancient rule of which I have been speaking, and for which I contend, has received recognition by the Court. There is a complete silence, and perhaps in this period there has gone before the Court as many large verdicts, perhaps larger, than in any former period. It is true to say that the Court has in most instances, and with very rare exception, studiously adhered to the recognition of a rule, a new one in its application to this particular subject, but an old rule, namely, that the award having met the approval of the trial Court, we will not interfere, or we have no right to interfere unless it appears that this discretion or judgment of the trial Court is clearly wrong. In passing, let me ask what right will a trial Court have to say that the award of a jury is excessive, except to test it by the same test

that the Supreme Court had recognized in these cases in all the past? The trial Court must have a rule. It is not mere personal view; it is not mere individual disposition; it is not mere personal opinion. There must be, and there should be some test recognized, else we are at the mercy and the whim of some man sitting on the bench here, and the whim of some other man sitting on the bench elsewhere, then at the whim of seven men sitting on the bench in reviewing that conduct. There must be a rule; there should be a rule; there is a rule which has been recognized in Wisconsin up until this time. Now we have this other valuable rule which should be recognized, viz: giving weight to the fact that the verdict meets the approval of the trial court. I think the use of the phrase "so excessive", is unfortunate, as if damages were excessive, more excessive, most excessive. It should be, unless the award is "so great" rather than "so excessive". The award of damages is either excessive, or it is not excessive. If it is not excessive, I care not how large, it is a just award; it is a just verdict, and its integrity should be questioned by no Court. However, do not misunderstand me. If it is excessive; if it shocks the sense of justice; if within the rules that should be applied the award cannot stand, then it should fall. Note some of the later cases. The Gillett case in the 159th. This case shows a peculiar interpretation of 2405m. Now I want to get the facts of that case before you, so you will understand exactly what it was. A man was killed; a man 59 years of age. He left a widow and children dependent upon him. He was working in the woods, a strong, healthy, vigorous man, capable of earning a little over \$400 a year. In fact at the time he was killed he was working for \$35 a month, and receiving his board. Mr. Freeman, who defended that case, refused to move the trial Court, Judge Hastings, for a new trial, saying that he considered the award of damages as favorable as he would be likely to ever get, and he questioned but the liability, taking the position that notwithstanding the verdict, the defendant was entitled to judgment. The trial Court so held. An appeal was taken. The question of excessive damages was not even suggested in the oral argument. It was not suggested in the printed briefs. There was not suggestion or word of complaint from any source, about the sum awarded as damages, but when the opinion

came down, it was found that this widow, whose support had been killed, must remit from the award of \$4,625—\$1,625 as a condition of taking judgment, else a new trial was ordered on the sole question of damages. Now, not having left any elements of damages that could be proved, it was a case of take what was suggested, or try the case anew, and if the same or a larger award was had, again be subjected to the same interference unless second trial consideration saved. This action of the Court—it is not claimed it would have had it at an earlier time, but it is claimed that by virtue of 2405m the Court may now do that in its discretion. It suggested to me whether or not that is not an entire perversion of 2405m.

A VOICE: What is 2405m? Read it.

MR. MARTIN: I have it here. It is the section which provides that regardless of the fact that objections have not been taken, or exceptions had, the Court in its discretion may review the record and take the same course as if proper objections had been made. In my judgment that is the entire extent and scope of 2405m. It was enacted in 1913. In other words, my idea of that section is that there were cases going before the Supreme Court where, because of inadvertence, because perhaps of the fact that attorneys overlooked the matter, injustice had been done, or as the statute says, "justice has miscarried," and the Court as the law stood, was unable to give relief. This section removed that difficulty. Well, if you are going to try to reach a conclusion as to whether or not justice has miscarried in the award of damages, you are up actually against the same proposition as when you are trying to determine whether or not the judgment is excessive. So this section was enacted, I take it, solely for relief, in the discretion of the Court, where it appeared that justice has miscarried, because of those technical obstacles hitherto existing and nothing else. This section is invoked in several opinions in connection with 2878. If 2878 conferred upon the Court the plenary power that is claimed for it in the Monahan case, and in some other cases, then there is no need of 2405m. But the fact is, I repeat, these sections furnish no yard stick to the determination of the question whether or not a verdict is excessive, and I believe, and the thing for which I contend is, that we should

have such yard stick. That we should have such rules. One safe rule is the recognition of the discretion of the trial Court. Another rule which has not been applied to this subject, but should be, is this: Where on any reasonable view of the evidence a jury might find a certain way on a certain issue, and so find, then the Court recognizes that it has no right to interfere. Why does not that apply to an award of damages? It says in any believable view of the evidence that the jury may take, when it reaches a judgment or a conclusion on an issue, that issue stands beyond question. Why isn't that true? Why should not that rule, as well, be applied to sustain the integrity of the award in a case of damages? I think it should. I think all these rules are so many safe guides to the judicial mind, and I think none of them should be discarded. Thank you, Gentlemen. (Applause).

ADDRESS BY HON. SIMEON E. BALDWIN,  
OF NEW HAVEN, CONN.  
ON THE SUBJECT  
"KEEPING OUR TREATY OBLIGATIONS."

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DELIVERED JUNE 29, 1916.

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The highest quality of a great nation is its keeping of public faith. For a weak nation to maintain it may be at bottom a mere act of prudence, or of necessity. A great nation holds to it as a matter of honor.

In dealings of private individuals good faith is enforced by courts of justice. In the dealings of nations, its observance must rest, in the main, on public opinion.

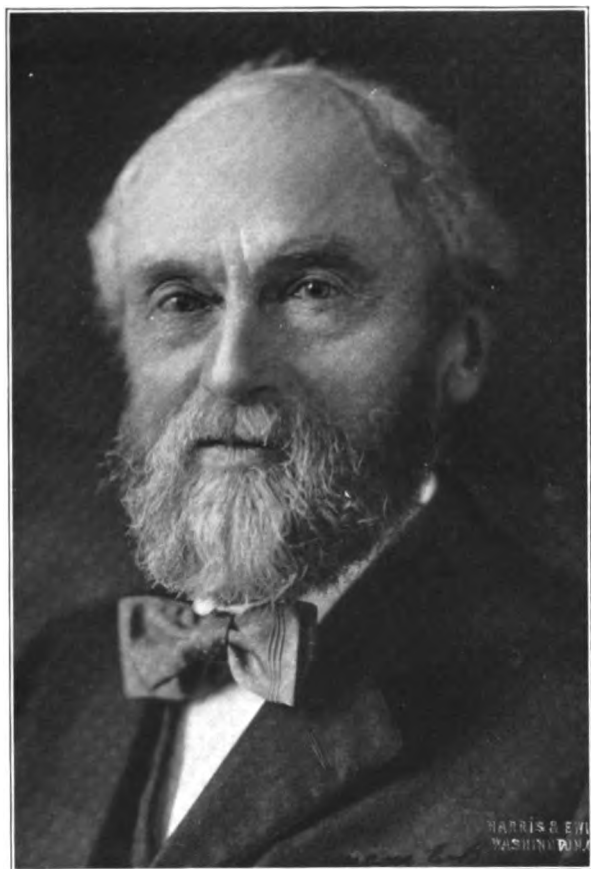
Public opinion is largely dependent for its expression on the public press. The tone of the public press is largely dominated by that of the daily newspaper.

A great figure in French literature, at a moment when the public sentiment of his country was, in the case of one poor man, opposed to public justice, came forward and threw down the gauntlet of white-hot censure before her army and her government. The words of Zola challenged and commanded the attention of his fellow citizens. They did not fail of ultimate and full effect. Dreyfus, after long years, came to his own. The press had been his assailant. It became his defender. The cry of *J'accuse* was echoed back by earnest and thoughtful men month after month, year after year.

I have come here to bring a greater charge against the press of the United States and the bar of the United States.

I accuse the press, and particularly the newspapers of the United States, of having, during the last two years, taken as a whole, maintained an attitude tending to divert their country from the path of public faith.

We have assumed great obligations to the rest of the world during the last thirty years. I accuse the press and the



**SIMEON E. BALDWIN.**



newspapers, since the outbreak of the pending wars, of having been the largest contributors to a public opinion based on popular ignorance or misapprehension of these obligations, in the matter of neutral rights and international arbitration. The people have been misled because not properly informed. How many men of influence have taken their knowledge on these points wholly from the newspapers; and believed that to be true which a little personal examination of original sources would have shown them to be untrue?

I accuse also the bar of the United States of inconsiderately following the lead of the periodical press in this direction, and taking a second place as instructors of the people as to what public faith demanded, when they were entitled to the first place. There their professional training and knowledge made them—and them alone—capable of giving such instruction with authority and with candor.

This is a country governed by laws. We lawyers know best what those laws are, and particularly what they are as regulating international duty. The people naturally will look—and have looked—to us for information in regard to them. We have, most of us, not taken the trouble to give the information, or to fit ourselves to give it.

We do not give our advice as to the effect of a statute till we have looked it up. How many American lawyers have looked up and studied the treaties and other documents governing our foreign relations with respect to the adjustment of international controversies? How many newspaper editors have done this? How many, during the last two years, have written editorials against offering ourselves, or accepting, when offered by other Powers, resort to arbitration as to any claims for breach of neutral rights we have against foreign nations; and how many have written these without ever having read the treaties in which we have pledged ourselves to that very thing?

Let us look back a little more than a quarter of a century, to the first and all-important step of the United States in support of a world-wide and thorough-going policy of international arbitration.

In 1890, Congress adopted a resolution "that the President be requested to invite, from time to time, as fit occasion may arise, negotiations with any government with which the



United States has or may have diplomatic relations, to the end that any differences arising between the two governments, which cannot be adjusted by diplomatic agency, may be referred to arbitration, and be peaceably adjusted by such means."

Under the peculiar division of powers between the executive and legislative departments of the United States, it may be doubted whether this gave the President any authority which he did not previously, and by higher right, possess. It was, however, undoubtedly, an expression of the public opinion of the country at that time, and a declaration of policy to which all foreign nations could justly give great weight.

In the same year, the first Pan-American Congress met at Washington. It framed an arbitration treaty for general adoption, providing for the arbitration of all matters of controversy between any American nations, except questions a decision of which might imperil the independence of either.

Three years later, the British House of Commons passed a resolution approving the resolution of our Congress in 1890, and expressing "the hope that her Majesty's government will lend their ready co-operation to the government of the United States for the accomplishment of the object had in view."

What was this object? The peaceable adjustment, by means of arbitration, of *any* differences between *any* nations, which cannot be adjusted by diplomatic negotiations. We had made no reservations. The House of Commons made none.

Next came, in 1898, the invitation of the Czar of Russia to all the Powers then represented at his court, to send delegates to a Peace Conference to be held at the Hague during the following year.

The Conference, he said in the original rescript of August 24, 1898, "should be, by the help of God, a happy prelude for the century which is about to open. It would converge in one powerful focus the efforts of all states which are sincerely seeking to make the great idea of universal peace triumph over the elements of trouble and discord. It would, at the same time, confirm their agreement by the solemn establishment of the principles of justice and right, upon

which repose the security of States and the welfare of peoples."

In the Convention agreed on at this first Hague Conference in 1899 for the pacific settlement of International disputes, the signatory Powers declared that they had framed it because "resolved to second by their best efforts the friendly settlement of international disputes; recognizing the solidarity which unites the members of the society of civilized nations; desirous of extending the empire of law, and of strengthening the appreciation of international justice; convinced that the permanent institution of a Court of Arbitration, accessible to all, in the midst of the independent Powers, will contribute effectively to this result; having regard to the advantages attending the general and regular organization of arbitral procedure; sharing the opinion of the August Initiator of the International Peace Conference that it is expedient to consecrate in an International Agreement the principles of equity and right on which are based the security of States and the welfare of peoples."

In 1900, this Convention was ratified by all the Great Powers (including Austro-Hungary, France, Germany, Great Britain, Italy, Japan, Russia, and the United States) and in 1901 by Serbia. It recited that "with a view to obviating, as far as possible, recourse to force in the relations between States, the Signatory Powers agree to use their best efforts to insure the pacific settlement of international differences."

It provided (Art. IX) that "in differences of an international nature involving neither honor nor vital interests, and arising from a difference of opinion on points of fact, the Signatory Powers recommend that the parties who have not been able to come to an agreement by means of diplomacy should, as far as circumstances allow, institute an International Commission of Inquiry, to facilitate a solution of these differences by elucidating the facts by means of an impartial and conscientious investigation."

It affirmed (Art. XVI) that "in questions of a legal nature, and especially in the interpretation or application of International Conventions, arbitration is recognized by the Signatory Powers as the most effective, and at the same time

the most equitable, means of settling disputes which diplomacy has failed to settle."

In 1903, Chile and Argentina adopted such a treaty as had been suggested by the Pan-American Congress at Washington. It pledged them for five years to submit to arbitration all disputes between them of any kind whatever, except such as might imperil national independence.

The next year the Netherlands and Denmark concluded a treaty on the lines indicated by Article 19 of the Hague Convention of 1899. It states that they are "moved by the principles of the Convention for the Pacific Settlement of International Disputes, concluded at the Hague on the 29th of July, 1899, and desiring to establish especially in all reciprocal relations the principle of obligatory arbitration by a general agreement" \* \* \* "undertake to submit to the Permanent Court of Arbitration all mutual difference and disputes that cannot be solved by means of a diplomatic channel." This was to remain in force till denounced on one year's notice by either party.

Then followed the second Hague Peace Conference, of 1907, as to the replacement of war by arbitration before a permanent tribunal. It did not go to the lengths found in the treaty of the Netherlands with Denmark, but it did repledge the parties to it (Preamble and Articles IX and XXXVIII) to the same principles laid down in the Convention of 1900, and stated them in still stronger form. As to questions of a legal nature, it expressly affirmed that "it would be desirable that, in disputes about the above-mentioned questions, the contracting parties should, if the case arose, have recourse to arbitration, in so far as circumstances permit."

How far now have the Powers that ratified these Conventions observed them during the past two years?

The refusal by Serbia to comply with all the demands made by Austria-Hungary, in her note of July 23, 1914, was the immediate or at least ostensible cause of the present European wars. Serbia's reply of July 25 stated that, should her position not be accepted as satisfactory, she was ready to refer the decision of the questions in controversy to the International Court at the Hague.\*

\*Collected Diplomatic Documents, relating to the Outbreak of the European War, 423.

Austria-Hungary took no notice of the offer, but afterwards, in publishing this paper, added a comment that it was "entirely a play for time." As Serbia was not a party to the Hague Arbitration Convention of 1907, her proposition might probably be properly ignored.

On July 29, 1914, the Czar of Russia telegraphed to the Kaiser that "it would be right to give over the Austria-Serbian problem to the Hague Tribunal."\*\* No notice of this overture was taken by Germany. It was a mere expression of opinion, and referred to a difference between two other Powers, in which neither she nor Russia had any immediate share. If it were to be submitted to the Hague Tribunal, the action would have to be taken by Austria-Hungary and Serbia, and Serbia had already done what she could in that direction. The Hague Convention, therefore, laid no special duty upon Germany in consequence of the Czar's telegram.

Next came our turn. On January 28, 1915, one of Germany's cruisers had sunk on the high seas an American ship, the *William P. Frye*, carrying a cargo, most of which she considered to be contraband. We presented a claim for the value of the vessel, on the ground that her destruction was contrary both to international law and to our treaty with Prussia of 1799. Germany refused, after several diplomatic communications, to admit that it was contrary to either. On July 30, 1915, Germany offered to pay the fair value of the ship, not as a satisfaction of a legal demand, but as one of duty or policy founded on treaty stipulations. Should this mode of settlement be not acceptable, she suggested that the question of their legal interpretation should be submitted to the Hague Tribunal. Such a reference, under Article 38 of the Hague Convention of 1907 for the pacific settlement of international disputes, was thereupon agreed to by both governments, and Germany prepared a form of submission (*compromis*) which she sent to us November 29, 1915.\* It has not, so far as I am aware, yet been submitted to the Senate for ratification.

Meanwhile, on April 28, 1915, another American ship, the *Cushing*, had been attacked by an armed aeroplane, which, as our Government claimed, belonged to the German air fleet.

\*\*Id., 542.

\*Am. Journal of International Law, X, 33-38, 153, 149.

In our dispatch of May 13, 1915, in regard to this case, we also complained of the sinking, on May 1, 1915, by a German submarine, of the *Gulflight*, likewise an American ship. Germany replied to this note on May 28, that she was investigating the facts as to whether the bombs were in fact dropped on the *Cushing* by one of her air fleet, and also as to whether the *Gulflight* was in any fault; adding that, if we thought it desirable, she would join us in submitting these questions to "an International Commission of Inquiry, pursuant to Title III of the Hague Convention of October 18, 1907, for the pacific settlement of international disputes." Three days later, Germany, having completed her investigation of the *Gulflight* case, notified us that she was satisfied that the commander of her submarine was in fault and agreed to make full reparation. She also asked our government for further information as to the facts in the *Cushing* case. We replied, on June 9, that we were gratified by "the frank willingness of the Imperial German Government to acknowledge and meet its liability where the fact of attack upon neutral ships 'which have not been guilty of any hostile act' by German aircraft or vessels of war is satisfactorily established; and the Government of the United States will in due course lay before the German Imperial Government, as it requests, full information concerning the attack on the steamer *Cushing*."

Pending these negotiations, on May 7, came the sinking near the Irish coast by a German submarine of the *Lusitania*, a British ocean liner, attended by a fearful loss of life.

As to the facts in this case Germany and the United States were not fully agreed.

The German claims in regard to these were that the *Lusitania* was armed; that whether armed on this voyage or not, however, she had been armed on previous voyages, and so that the commander of the submarine was justified in presuming her to be armed on this; that she was constructed with government funds as part of the reserve force of the British navy, and entered as such on the official navy lists; that she carried a cargo largely made up of high explosives, designed for military use against Germany; that their explosion was the immediate cause of the sinking of the ship; that had it not been for them the blow inflicted by the torpedo

would not have sunk her until there had been time for the passengers and crew to take to the boats; and that these were large enough to carry over twenty-six hundred persons, while the passengers and crew numbered less than two thousand.

It is conceded that the following advertisement appeared in a number of American newspapers on May 1, 1915, which was the day when the *Lusitania* sailed:

“NOTICE!

“Travelers intending to embark on the Atlantic voyage are reminded that a state of war exists between Germany and her allies and Great Britain and her allies; that the zone of war includes the waters adjacent to the British Isles; that, in accordance with formal notice given by the Imperial German Government, vessels flying the flag of Great Britain, or of any of her allies, are liable to destruction in those waters and that travellers sailing in the war zone on ships of Great Britain or her allies do so at their own risk.

“Imperial German Embassy,

“Washington, D. C., April 22, 1915.”

There is no question that the *Lusitania* was sunk in what Germany has assumed to mark off from the high seas as a “war zone.” This was done by a proclamation issued February 4, 1915, containing this declaration:

“The waters surrounding Great Britain and Ireland, including the whole English Channel, are hereby declared to be war zone. On and after the 18th of February, 1915, every enemy merchant ship found in the said war zone will be destroyed without its being always possible to avert the dangers threatening the crews and passengers on that account.”\*

Upon these facts, Germany claimed that, under the principles of international law, she incurred no responsibility for the deaths of over a hundred Americans, due to the sinking of the ship.

Three questions of law were thus raised:

1. Could Germany create a war zone on the high seas?
2. If so, could she, after proclaiming it, destroy, without previous warning, an enemy merchant ship venturing into it, carrying explosive munitions of war, although she had neutrals on board, whose lives were consequently lost?

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\*Huberich and King, *The Prize Code of the German Empire*, 143.

3. Did the notice of May 1 from the German embassy have any bearing on the case?

On each of the points involved the German view was opposed to ours.

War zones of a character somewhat similar had been created by many belligerent Powers for more than a hundred years. Our Naval War College, in 1912, had discussed their validity, and came to the conclusion that the commander of a neutral man-of-war, if asked to escort one of his country's merchant ships through such a military area, should decline, and should advise the master of the ship to keep out of it.\*

A volume was published in the Fall of 1915, containing the opinion of twenty-one of the leading authorities in Germany on international law, as to the questions which have been stated, and each came to the conclusion that the sinking of the *Lusitania* was justified under all the attending circumstances.

A few months after the event, Germany offered to submit the points of difference between the two nations to arbitration, before the Hague Tribunal, but if we may trust unofficial reports in our leading newspapers, we refused, and when, in January, 1916, Germany renewed this offer, we again declined, and on the ground that we did not care to submit to arbitration a case so marked by the loss of human life.

In August, 1915, another British steamer, the *Arabic*, was sunk by a German submarine in the so-called war zone, sixteen miles off the Irish coast, and an American on board lost his life. Our government claimed that the sinking was in violation of international law. Germany claimed that under the circumstances as they appeared at the time to the commander of her submarine, it was in accordance with international law, because he, whether mistakenly or not, thought he was being attacked. On September 7, 1915, the German Government, in a note to our ambassador at Berlin, set up this justification, adding: "If it should prove to be the case that it is impossible for the German and American Governments to reach a harmonious opinion on this point, the German Government would be prepared to submit the difference of opinion as being a question of international law to the Hague Tribunal, pursuant to Article 38 of the Hague

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\*Proceedings of the Naval War College for 1912, 117, 128, 129.

Convention for the pacific settlement of international disputes. In so doing it assumes that as a matter of course the arbitral decision shall not be admitted to have the importance of a general decision on the permissibility or the converse under international law of German submarine warfare."

This offer to submit the cause to arbitration was not accepted by the United States.

If, as he claimed, the commander of the submarine in this case saw the *Arabic*, an enemy ship, headed for his own ship, which was much inferior in size, under such circumstances as reasonably to justify the belief that the purpose was to ram and sink her, there is high authority for saying that, at common law, the right of self defense justified his sinking the *Arabic*.\*

An examination of the governing principles of law, however, became unnecessary by the decision of the German Government, on October 5, 1915, (made in view of affidavits by officers of the *Arabic* that no assault on the submarine was in fact intended), to disavow the act of her commander, and to agree to pay a proper indemnity for the loss of the life of the American citizen.

On March 24, 1916, the French steamer *Sussex*, a regular passenger packet between Folkestone and Dieppe, having Americans on board, was badly wrecked in the English Channel. The injury might have been due either to a mine, or a torpedo. We asked Germany if it was inflicted by one of her submarines. She replied, by a note dated April 10, stating that one of them discharged a torpedo at a steamer at or near the place and time indicated by us, in the belief that she was a warship; that the report of the commander of the submarine indicated that the steamer so struck was of a different build from that of the *Sussex*; and so that the government was forced to assume that the latter was not attacked by any of its fleet; but requesting that if we had any further evidence to the contrary it be communicated for examination. It was added that "in the event of differences of opinion arising between the two governments in this connection, the German Government declares at this time its readiness to permit the facts to be ascertained by a mixed committee of in-

\*Bishop on Criminal Law, II., Sec. 560 *et seq.*; *Morris vs. Platt*, 32 Conn., 75, 83.



vestigation, pursuant to the third title of The Hague Convention of October 18, 1907, for the pacific settlement of international disputes."

On April 18 we replied that further evidence of the character of the wreck, a statement of which was enclosed, satisfied us that the *Sussex* was injured by a German torpedo, and that unless the Imperial Government "should now immediately declare and effect an abandonment of its present methods of submarine warfare against passenger and freight-carrying vessels, the Government of the United States can have no choice but to sever diplomatic relations with the German Empire altogether." No allusion was made to the German proposal for a mixed Commission of Inquiry under the terms of the Hague Convention.

On the next day, the President of the United States addressed Congress on the subject in terms substantially corresponding to those of our diplomatic note.

On May fourth Germany sent us a conciliatory note, and on May eighth informed our ambassador that she had concluded her further investigation of the evidence presented by us and "frankly admitted" that the *Sussex* was wrecked by one of her submarines, in contravention of the assurances she had given us as to attacks on passenger vessels. She therefore expressed her "sincere regret", and declared her readiness to pay an adequate indemnity.

Has the American newspaper, in its comments on the incidents of the present wars, given these repeated appeals of Germany for a resort to the methods provided in the Hague Arbitration Convention of 1907, the importance which they deserved? Has the American lawyer explained to the American public that these methods exist, and what they are? The permanent tribunal which that Convention constituted is but a rough attempt to provide a court of justice for the world, but it is the best agency now existing for settling the disputes of nations. Lincoln once said to John Hay: "We must use the tools we have." That tribunal, and the auxiliary remedy by a mixed International Commission of Inquiry, are all the tools we have, except the strong hand, to enforce against any nation its duties to other nations.

It is hoped by many, and probably by most of the American people, that the close of the war will be followed by

some better organization of the world for these same purposes. The President of the United States, in his speech at Washington, on May 27th, 1916, favored "a universal association of the nations to maintain inviolate security of the highway of the seas for the common and unhindered use of all nations of the world, and to prevent any war begun either contrary to treaty covenants or without warning and full submission of the causes to the opinion of the world:—a virtual guarantee of territorial integrity and political independence." How far have we of the United States contributed toward the formation of such an association, by co-operating with other nations in the use of the means for keeping peace which the great Convention of the Hague put at the service of the world?

A "rider" was attached by Congress, last month, to the Naval Appropriation Bill, which authorizes the President, after the present wars in Europe are ended, "to invite all great Governments of the world to send representatives to a conference, which shall be charged with the duty of suggesting an organization, court of arbitration, or other body, to which disputed questions between nations shall be referred for adjudication and peaceful settlement, and to consider the question of disarmament and submit their recommendations to their respective Governments for approval."

Is there no danger that such an overture may be met by the objection that the provisions in the Hague Convention of 1907 for referring disputes between nations have not been followed by us during the last two years in such a way as to give much prospect for better success under any new Convention for the same object that the world might frame?

When Algernon Sidney was defending himself on an indictment for treason, his claim was that a conspiracy to levy war, with which offence he was charged, was not treason, and he asked that he might have counsel to argue this as a question of law. The only reply of Chief Justice Jeffreys was, "'Tis not a question. You had as good ask me whether the first chapter in Littleton be law."

When a nation with which we have a difference claims that it is one of a legal nature turning upon a certain point of law which makes in its favor, and offers to submit that contention to the Hague Tribunal, I do not think that we,

conformably to our treaty obligations, can simply refuse the offer on the ground that there is no legal question.

The policy adopted by our government, in the case of the *William P. Frye*, by accepting the German offer to submit it to the Hague Tribunal, was right. It was right in principle. It was right because it was only doing what we had virtually pledged ourselves to do, in ratifying the Convention under which that tribunal was called into being. And in the same spirit, I do not hesitate to say that it seems to me that if, as is commonly reported, our government, in the case of the dispute as to the sinking of the *Lusitania*, refused the German offer to submit it to that same tribunal, it was not in full accord with the obligations imposed upon us by that Convention.

I appeal to every man here to look into his own heart and ask himself what he has done to sanctify and safeguard the public faith his country has pledged in support of the two great Hague Conventions. That for the general reference to the Hague Tribunal of international disputes, and that for organizing a real world-court for nations, are milestones in the road towards the abandonment of aggressive wars, and so the natural cessation of defensive wars. Am I, are you, travelling on that road? It is an individual question for each of us.

We are always "crossing the line" between the Past and the Future. The equator for every man is himself. Is he honestly and outspokenly in favor of a Future of public faith kept inviolate? So far as he is, he takes the part of a patriot. So far as he is not, he takes the part of an enemy of all free government.

OFFICERS OF THE AMERICAN BAR  
ASSOCIATION, 1916-1917.

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**President:**

George Sutherland, Salt Lake City, Utah.

**Secretary:**

George Whitelock, Baltimore, Md.

**Assistant Secretaries:**

W. Thomas Kemp, Baltimore, Md.

Gaylord Lee Clark, Baltimore, Md.

**Treasurer:**

Frederick E. Wadhams, Albany, N. Y.

**Vice President for Wisconsin:**

W. A. Hayes, Milwaukee.

**Member of General Council for Wisconsin:**

John B. Sanborn, Madison.

**Local Council:**

P. H. Martin, Green Bay.

John M. Whitehead, Janesville.

Robert Wild, Milwaukee.

J. Gilbert Hardgrove, Milwaukee.

**Delegates to Meeting of American Bar Association, Chicago,  
1916:**

Hon. J. B. Winslow, Madison.

P. H. Martin, Green Bay.

John Kluwin, Oshkosh.

## OFFICERS OF THE STATE BAR ASSOCIATION OF WISCONSIN, 1916-1917.

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### President:

B. R. Goggins, Grand Rapids.

### Vice-Presidents:

- |              |                                  |
|--------------|----------------------------------|
| 1st Circuit: | C. D. Barnes, Kenosha.           |
| 2nd          | “ W. A. Hayes, Milwaukee.        |
| 3rd          | “ Fred Beglinger, Oshkosh.       |
| 4th          | “ A. L. Hougen, Manitowoc.       |
| 5th          | “ T. M. Priestly, Mineral Point. |
| 6th          | “ C. L. Baldwin, La Crosse.      |
| 7th          | “ W. E. Fisher, Stevens Point.   |
| 8th          | “ Spencer Haven, Hudson.         |
| 9th          | “ John B. Sanborn, Madison.      |
| 10th         | “ Francis Bradford, Appleton.    |
| 11th         | “ Charles Smith, Superior.       |
| 12th         | “ A. E. Matheson, Janesville.    |
| 13th         | “ A. J. Frame, Waukesha.         |
| 14th         | “ S. H. Cady, Green Bay.         |
| 15th         | “ William E. Shea, Ashland.      |
| 16th         | “ F. E. Bump, Wausau.            |
| 17th         | “ C. A. Veeder, Mauston.         |
| 18th         | “ John J. Wood, Jr., Berlin.     |
| 19th         | “ Roy P. Wilcox, Eau Claire.     |
| 20th         | “ Allen V. Classon, Oconto.      |

### Secretary-Treasurer:

George E. Morton, Milwaukee.

### Assistant Secretary:

Arthur A. McLeod, Madison.

### Executive Committee:

The President, Secretary-Treasurer and the Chairman of  
each of the six committees:

Bernard R. Goggins, Grand Rapids.

George E. Morton, Milwaukee.

Joseph B. Doe, Milwaukee.

P. H. Martin, Green Bay.

Robert Wild, Milwaukee.

B. L. Parker, Green Bay.

H. S. Richards, Madison.

W. A. Hayes, Milwaukee.

## STANDING COMMITTEES, 1916-1917.

(With Date of Expiration).

## Legal Education:

Dean H. S. Richards, Madison, 1918 (Chairman).  
S. H. Cady, Green Bay, 1917.  
Charles T. Hickox, Milwaukee, 1917.  
R. A. Hollister, Oshkosh, 1918.  
Croman Mason, Madison, 1918.  
Francis E. McGovern, Milwaukee, 1919.  
Albert S. Larson, Shawano, 1919.

## Judicial:

Joseph B. Doe, Milwaukee, 1919 (Chairman).  
F. R. Bentley, Baraboo, 1919.  
Judge John Barnes, Milwaukee, 1919.  
Edgar L. Wood, Milwaukee, 1917.  
M. J. Wallrich, Shawano, 1917.  
Daniel H. Grady, Portage, 1918.  
Solon L. Perrin, Superior, 1918.

## Amendment of the Law:

P. H. Martin, Green Bay, 1919 (Chairman).  
Judge C. A. Fowler, Fond du Lac, 1917.  
W. D. Corrigan, Milwaukee, 1917.  
Judge A. H. Reid, Wausau, 1918.  
John F. Martin, Green Bay, 1918.  
Frank H. Hanson, Mauston, 1919.  
Roy P. Wilcox, Eau Claire, 1919.

## Necrology:

Robert Wild, Milwaukee, 1917 (Chairman).  
W. R. Bagley, Madison, 1917.  
J. E. McMullen, Chilton, 1917.  
George L. Williams, Grand Rapids, 1918.  
H. J. Frame, Waukesha, 1918.  
W. K. Parkinson, Phillips, 1919.  
Andrew Lees, La Crosse, 1919.

## Publication:

W. A. Hayes, Milwaukee, 1917 (Chairman).  
J. B. Kemper, Milwaukee, 1919.  
John C. Thompson, Oshkosh, 1918.  
John J. Wood, Jr., Berlin, 1918.  
Chauncy E. Blake, Madison, 1919.  
Judge Geo. C. Hume, Chilton, 1919.  
L. G. Wheeler, Milwaukee, 1919.

## Membership:

B. L. Parker, Green Bay, 1919 (Chairman).  
J. O. Carbys, Milwaukee, 1917.  
E. D. Minahan, Rhinelander, 1917.  
J. E. McConnell, La Crosse, 1918.  
M. E. Walker, Racine, 1918.  
H. L. Butler, Madison, 1919.  
A. E. Matheson, Janesville, 1919.

## SPECIAL COMMITTEES.

## Uniform Judicial Procedure:

C. B. Bird, Wausau.  
Walter C. Owen, Madison.  
John F. Martin, Green Bay.

## Retirement of Judges:

W. A. Hayes, Milwaukee.  
J. Henry Bennett, Viroqua.  
Morton E. Davis, Green Bay.  
Merlin Hull, Madison.  
Otto A. Oestreich, Janesville.

## Criminal Law and Criminology:

Judge August C. Backus, Milwaukee.  
George B. Hudnall, Madison.  
E. E. Brossard, Madison.  
A. L. Hougen, Manitowoc.  
Winfred C. Zabel, Milwaukee.

REPORT  
OF THE  
PROCEEDINGS OF THE MEETINGS  
OF THE  
State Bar Association  
OF WISCONSIN

JUNE 27, 28, 29, 1917





# ANNUAL MEETING of THE STATE BAR ASSOCIATION OF WISCONSIN

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HELD AT MADISON, WISCONSIN, JUNE 27, 28, 29, 1917.

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Session Wednesday, June 27, 1917.

Meeting called to order at 2:30 o'clock P. M. by the President, B. R. Goggins, who after making some preliminary announcements in reference to the program, read his Annual Address to the Association.

Address read. (See Appendix, p. 233)

PRESIDENT GOGGINS: The next number on the program is an address by Moses Hooper, of Oshkosh, on the subject of Some Early Lawyers and Some Early Practice in Wisconsin.

Address read. (See Appendix, p. 251)

THE PRESIDENT: I am sure we all feel grateful to Mr. Hooper for coming here and presenting his paper, which I think will be a valuable part of the literature preserved in the records of the Association.

There is another announcement I wish to make. The visiting ladies are invited by Mrs. Burr W. Jones to a tea tomorrow, Thursday afternoon, from 4 to 6 o'clock.

We will now take up the matter of general business of the Association; first is the report of the Committee on Membership and the election of members. Mr. Parker is chairman of that Committee.

MR. B. L. PARKER of Green Bay, then read the report of the Committee on Membership.  
To the Wisconsin State Bar Association:

Your Committee on Membership hereby reports that during the past year the following applications for membership have been received and approved as of the dates indicated on the applications, respectively:—

## ACTIVE MEMBERS.

Harry L. Maxfield, Janesville.  
 John Luchsinger, Monroe.  
 Jesse Earle, Janesville.  
 J. J. Cunningham, Janesville.  
 Emmett D. McGowan, Janesville.  
 George G. Sutherland, Janesville.  
 Robert D. Gordon, La Crosse.  
 S. G. Gordon, La Crosse.  
 Arthur T. Holmes, La Crosse.  
 Otto Bosshard, La Crosse.  
 Geo. W. Bunge, La Crosse.  
 Fred H. Hartwell, La Crosse.  
 Warren B. Foster, La Crosse.  
 John J. Esch, La Crosse.  
 Frank Winter, La Crosse.  
 Peary A. Sletteland, La Crosse.  
 Patrick T. Stone, Wausau.  
 Brayton E. Smith, Wausau.  
 George J. Leicht, Wausau.  
 Millman W. Sweet, Wausau.  
 John P. Ford, Wausau.  
 Jonas Radcliffe, Mosinee.  
 Geo. H. McCloud, Ashland.  
 Benjamin S. Smith, Ashland.  
 M. E. Dillon, Ashland.  
 John Garvin, Ashland.  
 Charles F. Morris, Washburn.  
 Victor T. Pierreelee, Ashland.  
 F. M. Wilcox, Appleton.  
 H. Lee Frink, Marinette.  
 Alfred T. Rogers, Madison.  
 Charles H. Tenney, Madison.  
 Burr J. Scott, Milwaukee.  
 Paul D. Durant, Milwaukee.  
 E. C. Eastman, Marinette.  
 Louis A. Dahlman, Milwaukee.  
 W. E. Atwell, Stevens Point.  
 C. G. Cannon, Appleton.  
 Robert H. Markham, Manitowoc.  
 Joshua L. Johns, Algoma.  
 Herb. J. Smith, De Pere.  
 Helmuth F. Arps, Chilton.  
 John M. Becker, Monroe.  
 M. E. Burke, Beaver Dam.  
 H. M. Burns, Milwaukee.  
 Angelo Cerminara, Milwaukee.  
 Lawrence S. Coe, Rice Lake.  
 Samuel A. Connell, Milwaukee.  
 Stanley G. Dunwiddie, Janesville.  
 Emerson Ela, Madison.  
 Charles A. Enslow, Janesville.  
 J. Wallace Flynn, Pewaukee.  
 William A. Foley, Milwaukee.  
 William N. Fuller, Cumberland.  
 Harry R. Goldman, Marinette.  
 Mark J. Kerschensteiner, Fort Atkinson.  
 Edward M. Ladd, Edgerton.  
 Lawson R. Lurvey, Fond du Lac.  
 Omar T. McMahon, Milwaukee.  
 John W. McMillan, Milwaukee.  
 P. J. Murphy, Madison.  
 Raymond J. Perry, Milwaukee.  
 D. E. Riordan, Milwaukee.  
 Frank D. Reed, Madison.  
 Wm. F. Schauen, Pt. Washington.  
 Perry J. Stearns, Milwaukee.  
 H. E. Swet, Fond du Lac.  
 Charles A. Taylor, Barron.  
 John E. Tracy, Milwaukee.  
 Roger M. Trump, Milwaukee.  
 Adolph J. Weldner, Milwaukee.  
 Frederick M. Wylie, Madison.  
 Frank C. Meyer, Lancaster.  
 John J. Blaine, Boscobel.  
 William E. Howe, Boscobel.  
 J. W. Carow, Ladysmith.  
 William A. P. Aberg, Madison.  
 Lynn H. Ashley, Hudson.  
 R. M. Stroud, Madison.  
 Albert C. Michelson, Madison.  
 Charles G. Riley, Madison.  
 Edward J. Reynolds, Madison.  
 A. W. Kapp, Platteville.  
 Frank W. Lucas, Madison.  
 Harry E. G. Kemp, Boscobel.  
 M. B. Olbrich, Madison.  
 George Carey, Beloit.  
 Nissen P. Stenjem, Madison.  
 Frank A. Daley, Madison.  
 King M. Bacon, Madison.  
 J. F. Baker, Madison.  
 William H. Spohn, Madison.  
 John H. Morgan, Appleton.  
 Homer H. Benton, Appleton.  
 Charles T. Bundy, Eau Claire.  
 Cyril E. Marks, Madison.  
 Alfred H. Bushnell, Madison.  
 Earl G. Lake, Madison.  
 Charles N. Brown, Madison.  
 A. D. Gill, Mauston.  
 Nils P. Haugen, Madison.  
 Harry S. Comstock, Cumberland.  
 E. J. Brabaut, Madison.  
 Samuel Blum, Monroe.  
 James F. Daugherty, Kilbourn.  
 William H. McGrath, Monroe.  
 Frank L. Fawsett, Milwaukee.

Your Committee, therefore, recommends that each of the persons named be elected members of the Association.

June 27, 1917.

B. L. PARKER,

Chairman Committee on Membership.

Mr. P. H. Martin moved the adoption of the report. Motion seconded and carried, and the persons whose names were read were declared elected to membership in the Association.

Mr. G. E. MORTON then read his report as Secretary.

### SECRETARY'S REPORT.

Madison, 1917.

We meet again during a time of world strife, but for the first time since our own country became involved in it. What hardships and times of stress we shall see among our own people only the future can tell. We have, however, as last year, again had called to our attention the distress among our professional brethren abroad, and the statement is made that "more than twelve hundred barristers and upwards of two thousand solicitors are now serving in the British Army." The appeal in which this statement is made is signed by prominent members of the New York Bar, among whom are former United States Attorney General George W. Wickersham. This special appeal is for the "Professional Classes War Relief Council of England." They say:

"In England, as you are no doubt aware, it is upon this stratum of society that the burden of the War has hitherto fallen most heavily, yet these are the people who are least ready to appeal for outside aid."

It is for the Association to say what response shall be given.

### AMERICAN BAR ASSOCIATION.

A very important matter has been presented to us for action by the American Bar Association. At the last meeting of that Association, held August 30th to September 1st, 1916, in Chicago, the following amendment was made to the constitution of the Association, to-wit:

"The President of each State Bar Association recognized by this Association, which accepts this provision,

shall become a member *ex-officio* of the General Council provided he be a member of the American Bar Association, and provided further that votes in the General Council be by states whenever a roll call is asked."

"The Secretary of each State Bar Association recognized by this Association, which accepts this provision, shall become a member *ex-officio* of the Local Council for such state, provided he be a member of the American Bar Association."

The general object is to establish closer relations with the National Association, ostensibly for the benefit of both. It is for this body to say what action shall be taken by the Wisconsin State Bar Association in the matter.

In this connection it should be reported that there are now thirty-four Wisconsin members of the American Bar Association not members of this Association, and the effort made at the last meeting of that Association to make membership in the National Association conditional on membership in the State Association was defeated because, it is said, of the strength of City or County Associations in several large cities. Whether further effort should be made along that line is a proper question for consideration. The meeting of the General Council was held in Philadelphia last February, and another is set at the time of the meeting of the American Bar Association at Saratoga Springs, September 4th, 5th and 6th, 1917.

#### CODE OF ETHICS IN COURT HOUSES.

A further question referred to our Association is the proposal of the American Bar Association to furnish copies of the Canons of Ethics adopted by that Association, printed upon cardboard suitable for framing (22x28 inches), enough to permit one to be hung in every Court House in the State, if this Association will see that that is done. They also offer, if any code has been adopted by any state not essentially differing from that of the National Association, to print the local state code also for that purpose. It seems to require that this Association shall, unless relieved by the local bar undertake to frame and hang one in each Court House. The matter is submitted for your action. If done, it might be

well to add the oath which applicants for admission to the bar are now required to take upon such admission.

# DELEGATES' REPORT.

I bring it to the attention of the Association that no report has ever been asked for from our delegates to the American Bar Association. Should we not have such a report as part of our annual meetings?

# EXCHANGES.

I append to my report a list of exchanges so far established by Mr. Gilson G. Glasier, State Librarian, in whose hands the matter has been placed because the reserve volumes are with the State Library.

The number of reserve volumes on hand in the State Library not distributed are as follows:

Volume 1.....198	Volume 7.....201
Volume 2.....175	Volume 8.....168
Volume 3.....231	Volume 9.....514
Volume 4.....183	Volume 10.....389
Volume 5.....215	Volume 11.....353
Volume 6.....166	

# CONDITIONS OF MEMBERSHIP.

The matter of the conditions of honorary membership in the Association was brought to the attention of the Association at the last meeting and a committee was appointed by President Goggins to consider the matter, as follows:

Christian Doerfler, Milwaukee, (Chairman).

Hon. Byron B. Park, Stevens Point.

Chauncey E. Blake, Madison.

There are about two thousand practicing lawyers in the State, of whom but about six hundred fifty belong to our State Association. Should not the Association make an effort to spread such a sentiment among the Bar that lawyers will generally be convinced that it is worth while to belong to it,—by some special campaign perhaps by the local Bar to make plain what the Association is trying to do for their benefit.

The "ambulance chasing" bills have been killed in the Assembly in two successive legislatures because of the lack of local influence and interest of members, without doubt. Out of about six hundred or more at the Milwaukee Bar, but about one hundred fifty belong to this Association, while the local Association has a membership of Four Hundred and Fifty-three.

#### RESIGNATIONS.

There is but one resignation: Ernst Merton, East Troy.

Your Secretary suggests special action as to Mr. Merton, as he has paid dues for thirteen years and the reason for his resignation is that he is old and not in good health and cannot attend the meetings. Your Secretary, therefore, suggests that he be exempted from further dues and his name retained on the rolls. The same suggestion also applies to Mr. J. E. Wildish, a member of this Association for some years, but now in poor health. Mr. Wildish has been unable to keep up his membership because of this and has allowed it to lapse under the by-law. Your Secretary, therefore, following a number of precedents in such cases, suggests that action be taken reinstating and retaining his name upon the list without payment of dues.

#### VICE-PRESIDENTS.

I desire to make mention of the work which has been done by some of the Vice-Presidents, and by some other members of the Association, in the matter of securing applications for membership. Members were secured by Vice-Presidents as follows:

- C. L. Baldwin, La Crosse, 10 members;
- A. E. Matheson, Janesville, 8 members;
- W. F. Shea, Ashland, 6 members;
- F. E. Bump, Wausau, 6 members.

Mr. H. L. Butler, of Madison, and Mr. Clarence C. Coe, of Barron, though not Vice-Presidents, have interested themselves in this work, securing seven and three members respectively. Mr. Arthur A. McLeod, Assistant Secretary, has also been active in this matter.

## AMERICAN JUDICATURE SOCIETY.

I desire also to call attention to the work of the American Judicature Society, whose headquarters are at No. 13 West Lake Street, Chicago. This Society publishes a Journal bi-monthly, No. 1 of Volume 1 of which has just come to my hands, and I presume it has come to the members of the Association generally because application was made for our membership list. To be sure about it, however, I wish to call attention to the fact that no membership fee is charged, and that a lawyer will become a member upon application and will receive free the Journal of the Society published bi-monthly. Its bulletins will be charged for at the rate of 25c each, but I presume these would not be sent unless requested.

I wish to call the special attention of the members to an article entitled, "The Matter of Bar Organization," on page 21 of this current number, and suggest that our Association should put forth greater effort to accomplish its main purposes, which are to improve the standing of the profession and to be of greater service to the community. Every lawyer interested should send his name to the headquarters of the Society, above given.

I should further like to refer to an article in this number entitled "Wanted—A Chief Judicial Superintendent," by Dean John H. Wigmore of Northwestern University.

Respectfully submitted,

GEORGE E. MORTON, Sec'y.

List of exchanges referred to in Secretary's report:  
To each of the 48 official State Libraries.

Also the following:—

Edward B. Adams, Libr'n, Law School, Harvard Univ., Cambridge, Mass.

C. E. Blanchard, Sec'y, Ohio State Bar Assoc., Columbus, O.

J. B. Cave, Sec'y, Texas Bar Assoc., Dallas, Texas.

Edward L. Craig' Sec'y, S. C. Bar Assoc., Columbia, South Carolina.

H. S. Don Carlos, California Law Review, Boalt Hall of Law, Berkeley, Cal.

A. G. Ellick, Sec'y, Neb. State Bar Assoc., Omaha, Nebraska.



- Bernard Flexner, Sec'y, Kentucky State Bar Assoc., Louisville, Ky.
- Edwin Gholson, Libr'n Cincinnati Law Library Assoc., Cincinnati, Ohio.
- C. E. Graves, Univ. of Ill. Library, Urbana, Illinois.
- Harvard Law Review, Cambridge, Massachusetts.
- Luther E. Hewitt, Libr'n The Law Assoc. of Philadelphia, Room 600 City Hall, Philadelphia, Pa.
- F. C. Hicks, Libr'n, Law Library, Columbia Univ., New York City.
- Library of Congress, Washington, D. C.
- V. L. McCarthy, Sec'y Montana Bar Assoc., Helena, Mont.
- Andrew H. Mettee, Libr'n, Library Co. of the Baltimore Bar, Court House, Baltimore, Maryland.
- Law Library, University of Mich., Ann Arbor, Michigan.
- J. B. Minor, Sec'y Va. State Bar Assoc., Richmond, Virginia.
- Supreme Court Library, Salem, Oregon.
- Dr. Thomas M. Owen, Director Dep't of Archives & History, Montgomery, Alabama.
- Biddle Law Library, University of Pa., Philadelphia, Pennsylvania.
- Orville A. Park, Sec'y, Georgia Bar Assoc., Macon, Georgia.
- Franklin O. Poole, Libr'n, The Assoc. of the Bar of the City of New York, N. Y. City.
- Public Affairs Information Service (The H. W. Wilson Co.), White Plains, N. Y.
- Arthur C. Pulling, Libr'n, Law School, U. of Minn., Minneapolis, Minn.
- C. Will Schaffer, Sec'y, Wash. State Bar Assoc., Olympia, Washington.
- John F. Voight, Sec'y, Illinois Bar Assoc., Mattoon, Illinois.
- Frederic E. Wadhams, Sec'y N. Y. State Bar Assoc., Albany, N. Y.
- R. H. Wilkin, Libr'n, Supreme Court Library, Springfield, Illinois.
- E. E. Willever, Libr'n, Law School, Cornell Univ., Ithaca, N. Y.
- E. A. Feazel, Libr'n, Bar Assoc. Library, Court House, Cleveland, Ohio.
- J. P. Robertson, Provincial Libr'n, Winnipeg, Manitoba.
- E. H. Redstone, Libr'n, Social Law Library, Boston, Mass.

Richard Crump, Libr'n, N. Y. County Lawyers' Assoc., 165  
Broadway, N. Y.  
C. Henry Smith, Libr'n, Univ. of Colorado Library, Boulder,  
Colorado.  
Law Library, Univ. of California, Berkeley, California.

To State Libraries ..... 48 Copies  
Others as above ..... 35

Total ..... 83

Motion made, seconded and carried that the Association accept the provisions of the Constitution of the American Bar Association relating to the membership on the General Council and on the Local Council, referred to in the Secretary's report.

CHIEF JUSTICE WINSLOW: I would like to move, with reference to my old friend Ernst Merton, whom I have known many years and esteem very highly, that his name be continued on the roll without the payment of dues.

Motion seconded and carried.

MR. J. B. KEMPER: I would like to make the same motion in behalf of Mr. Wildish.

Motion seconded and carried.

THE PRESIDENT: Is there anything that ought to be referred to a committee?

THE SECRETARY: It seems to me, Mr. President, that this special appeal that comes to us from this New York Committee ought to be referred to a committee and some action taken.

THE PRESIDENT: Judge Reid was appointed last year to attend the meeting of the American Bar Association, and I presume we will have some report from him in regard to it.

THE SECRETARY: The matter of the furnishing to the different court houses of the state this code of ethics, framed, is one of the suggestions that is made to us by the American Bar Association.

THE PRESIDENT: If there is no objection we will refer that report to a Committee of Two. Hearing no objection, I will appoint as such committee Mr. H. L. Butler and Judge Reid.

MR. G. E. MORTON then read his report as Treasurer.

## TREASURER'S REPORT.

The undersigned begs leave to present to the Association his report as Treasurer covering the period from the date of his last report, June 27, 1916, to the day of this one, June 27, 1917.

## RECEIPTS.

Balance on hand at last Report.....	\$1,641.34
Receipts from dues.....	760.00
Receipts from sale of Reports.....	11.00
Interest on two certificates of deposit, \$500 each.....	30.00
Total receipts .....	<u>\$2,442.34</u>

## DISBURSEMENTS.

Check  
No.

150	To Simon E. Baldwin, for expenses in attending Oshkosh meeting.....	\$ 80.00
151	To A. B. C. Printing Co., for 300 programs of Oshkosh meeting.....	3.25
152	To S. M. Briggs, for postage for mailing reports .....	.83
153	To G. W. Hazelton, for refund on expense pamphlet on Lincoln.....	2.25
154	To Postmaster, for deposit on envelopes .....	1.36
155	To Postmaster, for stamps.....	2.00
156	To A. B. C. Printing Co., for 500 envelopes .....	4.20
156	To Postmaster, for stamps.....	2.00
158	To G. E. Morton, for July salary....	25.00
159	To Wis. Tel. Co., for telephoning J. C. Kluwin, Oshkosh .....	.80
160	To Postmaster, for envelopes.....	20.00
161	To W. J. Buckley, for report of Oshkosh meeting .....	60.00
162	To A. B. C. Printing Co., for stationery per statement of August 10, 1916 .....	17.35
163	To Postmaster, for stamps.....	1.00
164	To G. E. Morton, for August salary..	25.00
165	To G. E. Morton, for Sept. salary...	25.00
166	To Slekert & Baum, for letter files..	.70
167	To Postmaster, for stamps.....	1.00
168	To G. E. Morton, for October salary.	25.00
169	To G. E. Morton, for Nov. salary...	25.00
170	To A. B. C. Printing Co., for 500 application cards .....	6.00
170 ½	To G. E. Morton, for Dec. salary....	25.00

171	To Western Union Telegraph Co., for messages to George Whitelock, American Bar Ass'n, and E. E. Browne, Washington, D. C.....	1.30
172	To Postmaster, for stamps.....	1.00
173	To G. E. Morton, for January salary.....	25.00
174	To Western Union Telegraph Co. (canceled) .....	.....
175	To Wisconsin Telephone Co., for tolls during December and January....	3.55
176	To Postmaster, stamps .....	1.00
177	To Wis. Tel. Co., for telephoning B. L. Parker, Green Bay.....	.50
178	To G. E. Morton, for February salary.....	25.00
179	To G. E. Morton, for March salary....	25.00
180	To G. E. Morton, for April salary....	25.00
181	To Evening Wisconsin, for postage for mailing 1916 report.....	17.32
182	To Postmaster, for stamps .....	2.00
183	To Evening Wisconsin, for printing envelopes for mailing reports.....	14.21
184	To Evening Wisconsin, for printing of 1916 report.....	358.87
185	To G. E. Morton, for May salary....	25.00
186	To Postmaster, for stamps.....	5.00
187	To Postmaster, for stamps.....	5.00
188	To Cash, express charges on supplies sent to B. L. Parker.....	.29
189	To Daily Reporter, for advertising meeting .....	5.00
190	To Milwaukee Journal, for advertising meeting .....	5.04
191	To Gilson G. Glasier, Librarian, for postage, etc. ....	1.28
Total Disbursements .....		899.10
Balance on hand.....		\$1,543.24

The number of members who are delinquent in their dues prior to 1916 is only thirty-six. The number of members who have not paid their dues for 1916 is forty-three. Two hundred fourteen members have paid their dues for 1917, due June 1, 1917.

Respectfully submitted,

GEORGE E. MORTON, Treas.

On motion duly made, seconded and carried, the report of the Treasurer was referred to an auditing committee; and the President appointed as such committee Mr. E. E. Brossard of Madison, and Mr. W. H. Bennett of Milwaukee.

**THE PRESIDENT:** The next in order is the report of the Executive Committee. The only thing that was referred to that Committee a year ago was the matter pertaining to publication under the direction of the Secretary of the Association, instead of the Publication Committee. My own suggestion is that we let the matter stand without formal amendment to the constitution and have the publication for at least the next year made under the direction and supervision of the Secretary the same as last year.

Now the next order of business is the reports of Standing Committees. Has the Judicial Committee any report to make. General Doe is chairman of that Committee. Is he, or any member of the Committee, here?

**MR. BENTLEY:** Mr. President, we had two or three meetings in Mr. Does' office—I think two meetings,—at which a majority of the members of the Committee were present. We prepared, in connection with Mr. Martin, of Green Bay, who was chairman of his Committee, and presented a bill to the legislature, known as the Ambulance Chaser Bill. Perhaps Mr. Martin, who did more active work in that behalf than I, can give a better report of it. The bill passed the senate; but we were not successful by a long ways in having the bill pass the assembly. We put considerable time on this bill, but it failed of passage.

We also at our meetings discussed one or two complaints made of unprofessional conduct on the part of some member, and the matter was referred to a committee for investigation. I don't know whether that investigation was made, or not.

**THE PRESIDENT:** The next is the report of the Committee on Amendment of the Law. Mr. P. H. Martin is chairman of that Committee.

**MR. P. H. MARTIN:** Mr. President, our achievement has already been stated. With the aid of the Judicial Committee and suggestions from all the members of the Committee on Amendment of Laws, a bill was drafted covering the subject of ambulance chasing. A hearing was had before the Joint Committee of Assembly and Senate. Mr. Goggins appeared there in favor of it, and also Mr. Hayes and myself; and no one opposed. We supposed that the bill was going to go through without opposition as a matter of course. But the chairman of this committee was green in lobbying, and as-

sumed too much. The bill passed the Senate. A like bill—a measure covering in a general way the same field had been proposed by other members. Senator Wilcox had a bill covering practically the same ground. No opposition seemed to develop to the bill until it was defeated.

**THE PRESIDENT:** Is it the sense of this Association that the efforts in this line be continued?

**MR. MARTIN:** Mr. Chairman, I would suggest that, as part of my report—that we should persist in these efforts; because the evil is one that requires persistence.

**MR. SANBORN:** Mr. Chairman, I would move that the Association commend the Committee on Amendment of the Law for the work it did, and urge further efforts in this regard. I think the Committee has done very good work in this although, as Mr. Martin says, they failed in ultimate result; but I think it was not through any fault of the Committee or members of the Association who were connected with that work.

Motion seconded, and carried unanimously.

**MR. G. E. MORTON:** Mr. President, may I not ask whether this Association should not go further than just simply recommit this to the Committee which has had it, and permit them to pay their own expenses in the matter of whatever consideration they give this bill. Should not this Association take more interest in it than to simply recommit it in that way, but put some dynamics in this matter by furnishing some funds with which this Committee can do some work. As I understand it, and I think I am informed correctly, the Minnesota Association got about the same treatment from the Minnesota Legislature that we got from ours; and I think that it is their purpose to proceed further. I think that a good step was made by our Association when our committee joined forces with the committee of that Association in an attempt to have this matter put through both legislatures. It seems to me that we should not only recommit this matter to the hands of this Committee, but that we should say the Committee should have some funds with which to do this; and if it wanted to take the matter up with the Minnesota Committee, or in any other way in which a proper expenditure of money is necessary, that this Association should pay the expense, and not expect them to do the work and pay expenses too. I think there should

be something put into this matter in the next two years that would show we mean something in the matter; for I do not think there is any one thing that has come before the Association since I have been a member of it that is more important than this matter. And it seems to me that we should show the state that we are really interested; and I think if we show them that we are interested in it, that the Assembly will not dare to pay as little attention to recommendations of this Association as it has done in the past.

I make a motion that this Association pay the expenses that are incurred by this Committee in the next year in the prosecution of this campaign in this ambulance chasing matter.

Motion seconded by Mr. Jones.

MR. SMITH: Mr. Chairman, I am in sympathy with the motion; but it is a little dangerous for this Association to dispense such unlimited financial assistance in advance. I move the Executive Committee be authorized to provide the necessary funds of this Association for the prosecution of this work.

MR. MORTON: That is satisfactory.

MR. P. H. MARTIN: Mr. Chairman, I do not think any member of the Committee cared for the expense incurred. Speaking for myself, I would prefer to do what I can do in this regard without compensation. But I do think that something was lacking that might have been supplied by a committee of members of the Bar Association. And I have no doubt that had the Committee called upon individual members of the Bar Association for support we would have had a generous support. I think that there was some criticism resting upon your Committee in assuming that the bill was safe. Nothing is ever safe in a legislative body until it is passed and signed by the Governor—is the conclusion I have come to.

The substitute motion seconded by a number of members.

MR. MORTON: Mr. President, I just want to say one word more to indicate what I had in mind as to the extent to which this expense should be met. I assume that expense that is proper in this matter is not merely for railroad fare for conferences; but if the Committee felt that it had the money behind it to pay for printing bills and postage, it could get this Association more thoroughly in sympathy with their

work, and it would permit them to exert an influence upon individual legislators that it could not otherwise do.

Motion put and carried.

**THE PRESIDENT:** The next in order is the report of the Committee on Legal Education.

**DEAN H. S. RICHARDS:** Mr. Chairman and Gentlemen of the Association: The Committee on Legal Education last year prepared a report after several meetings, but through some misunderstanding the whole matter was referred back to the Committee, and the merits of the recommendation of the Committee were not considered at all. Our Committee held a meeting this spring and adopted some suggestions which I wish to present to you. These suggestions represent the feelings of the majority of the Committee. One member of the Committee, while regarding these suggestions as moderate and reasonable, takes the position that it is not an opportune time to do anything, and thinks we could do more if we postpone consideration of these matters until later. As you know, in this State the rules governing admission to the bar are established by the Supreme Court, and anything that comes from this body is merely a suggestion to the Court and to the Bar Examiners for their consideration and possible adoption. I will say most of the recommendations have been adopted by the American Bar Association, and have been enacted as law in a number of States; and the Committee thinks the Association should be advised of them, and it can then adopt them, or not, as it sees fit.

## REPORT OF COMMITTEE ON LEGAL EDUCATION.

To the Bar Association of Wisconsin:

The Committee on Legal Education desires to suggest to this Association certain changes in the rules governing admission to the bar in Wisconsin, which in the opinion of the Committee will tend to improve the character and preparation of applicants. In making these recommendations the Committee is not under the delusion that they are suggesting panaceas. Education alone is not the key to professional success and integrity. The Committee does believe, however, that a careful scrutiny of applicants for admission to the bar with respect not only to their professional attainments, but their



general education and character, will tend to lessen, if not eliminate, many of the acknowledged weaknesses within the profession.

The Committee does not wish to be understood as questioning the good faith or efficiency of the Board of Bar Examiners in administering the present rules. The Board is performing its functions with devotion and for an inadequate stipend. Every lawyer familiar with its labors feels that the tribute paid to it by the Supreme Court in a communication to this body in 1916, was well bestowed. It is our belief that if the recommendations of the Committee are adopted by the Court, that it will result in better standards and at the same time diminish rather than increase the labors of the Committee.

In none of the great professions is broad training prior to professional study more imperative than in law; yet we are lagging behind the other professions, both in the time prescribed for legal study, and the character and amount of prelegal training. Fortunately the best law schools have recognized the need of something more than a high school training, and today it would be difficult to find a law school of standing in the northern states that does not require at least two years of college work as preliminary to legal study or at least a degree in law. Many years ago this Association expressed its approval of the requirement of college work before beginning the study of law. The American Bar Association has also approved it. In view of the general recognition of the desirability of such preparation, why should the bar tolerate longer a mere elementary prelegal training from applicants who come from offices and night schools? The present rules now require a four year high school course or its equivalent.

The Committee recommends that all candidates for admission to the bar be required to have at least two years of college training or its equivalent. In recommending this action the Committee would not be understood to mean that all applicants must attend college for two years. Where an applicant has not pursued such a course, he should be compelled by an examination to display such knowledge of American and English institutional history, social and economic principles, and an ability to express himself in clear, terse English as will stamp him as a man of more than ordinary attainment and promise. Such a requirement could be satisfied by

private reading and study and would be no hardship to men of the right calibre for lawyers.

The argument that higher educational requirements will cut off many worthy men from the profession was potent in the pioneer period when the means of education were scanty and expensive. It hardly applies today with our wealth of educational facilities. If the bar really believes that the profession is a public one, and that the lawyer is an officer of the court, then in forming regulations we must think primarily of the public and not of the individual. Through the door long held open for the occasional genius, who does not need such concessions, we are making it possible for many men to become members of the bar, who because of their education and character should be excluded. One of the great problems in the profession today is professional standards. It is urged that higher requirements for admission to the bar will not aid in the solution of this problem. An educated man may be as dishonest as an uneducated one, but he is less apt to be, since as a rule the educated man has a better sense of proportion than an ignorant one. Education is not a cure-all, but one of the most valuable by-products are its inhibitions. Under the present rules the candidates submit to the Board certificates obtained from members of the bar or the Circuit Courts as to his moral fitness. Lawyers are subjected to the embarrassment of offending by refusing a testimonial to one who applied for it. The Committee favors the suggestion made at the last meeting, that the applicant shall furnish to the Board the names of four attorneys in the county where he has studied law, and that the Board submit inquiries to these persons for a confidential report on the character and tendencies of the applicant.

It is generally realized by the bar that the bar examiners are compelled to make too large a pecuniary sacrifice under the present rates of compensation. It is the belief of the Committee that steps should be taken to secure legislation that will assure to the members a per diem comparable to that which is earned by a lawyer of standing, in the trial of cases.

The Board should also be provided with a permanent secretary to take charge of the records of the Board, investigate the character of the applicants, register them and see that they have complied with all the rules before presenting themselves

for the examination. The clerk of the Supreme Court should be the secretary, his office at the seat of government and his relationship with attorneys would enable him to obtain information more readily than any other person. It ought to be possible to arrange this without interfering with the regular duties as clerk.

Registration with the Board at the beginning of the legal study has already been approved by the Board of Examiners. Rule 4 requests but does not require such registration. In this permissive form the rule is of no force.

The uniform rules of the Section on Legal Education (Rules 8, 9, 10) require registration, and a number of states,—Delaware, Michigan, Nebraska, New Hampshire, New York, North Dakota, Pennsylvania and Rhode Island, and the English Council on Legal Education. Such a rule tends to prevent fraud on the Board by false certificates and to insure that the candidate has studied law for the prescribed period. The fitness to practice is not a matter of concrete knowledge, so much as an ability to handle legal problems in a lawyerlike way. This ability is the result of a considerable period of thinking about legal problems. If the rules were so formulated and enforced as to insure that the candidate has devoted the period of time prescribed to legal study, it is the belief of the Committee that much of the present burden of the examiners would be relieved. It would not be necessary to devote so much time as at present to the legal examination, or to make the examination so comprehensive in scope. The chief purpose of an examination should be to test the applicant's ability to make reasoned application of legal rules and principles to concrete problems. An examination of comparatively limited scope will do this as effectively as the present long examination, and thus relieve the Board of the labor and drudgery of reading thousands of answers.

Adequate preliminary requirements strictly enforced would justify the presumption that a person complying therewith would normally be fit to be admitted to the bar, and the role of the examination would be that of a final check and not the chief basis of admission.

The Supreme Court suggests that such a rule would work hardship on those who were not informed of the rule, or who by inadvertence failed to give notice. It would seem, how-

ever, to be the duty of applicants to inform themselves of the rules governing admission. In the case of real hardship, which would be rare, the Board might allow a *nunc pro tunc* registration as is provided in rule VIII of the standard rules. Students studying in law schools might properly be excluded from the rule, since their official registration in the school would fix their period of study.

The Committee accordingly recommends the following action by the Association. The Wisconsin Bar Association recommends to the Supreme Court and the Board of Bar Examiners the adoption in substance of the following regulations governing admission to the bar, in the interest of better preparation for the practice of law.

(1) All applicants for registration as law students shall present to the Board prior to such registration proof that the applicant is a graduate of a four year high school and that he has had at least two years of study in a college or university in good standing, or that his attainments are the equivalent of such courses.

In determining the qualifications of such applicants an examination shall be given in the usual high school subjects to be specifically enumerated in the rules of the Board and an examination in history, particularly English and American institutional history, economics, and political science. The Board shall either give the examination or authorize the Superintendent of Public Instruction or the university to conduct it.

(2) Students shall be officially registered at the Commencement of the course of preparation for the bar. This registration shall be by the clerk of the Supreme Court. A candidate removing from a jurisdiction having similar standards for registration may have his registration transferred. *Nunc pro tunc* registration may be permitted, but only when the candidate had the requisite education at the date as of which he desires to be registered, and he presents sufficient excuse for not having previously registered.

A candidate removing from another jurisdiction where registration is not required may be registered *nunc pro tunc* under similar conditions.

(3) Each applicant for examination shall submit to

the Board at least 30 days before each examination the names of four attorneys in the county where he studied law to whom confidential inquiries can be made concerning his character.

(4) *Resolved*, That the Committee on Legislation be instructed to prepare and present a bill to the Wisconsin legislature increasing the appropriation for the state board for the purpose of providing adequate compensation to the Board of Bar Examiners. Also providing for a permanent secretary who shall have charge of the records and whose duty it shall be to see that the rules of the Board are observed by applicants for admission to the bar. If an arrangement can be made not incompatible with his present duties, it is the opinion of the Association that the Clerk of the Supreme Court should be *ex-officio* secretary to the Board.

Respectfully submitted,

DEAN H. S. RICHARDS, Chairman,  
CHARLES T. HICKOX,  
VROMAN MASON,  
R. A. HOLLISTER.

DEAN H. S. RICHARDS: This report meets the approval of the members of the Committee except one member. I think he labored under the impression, as I read his letter, that the present law did not require a high school education, and thinks we ought first to insist upon a high school education before going beyond that. And in explanation of the first recommendation I wish to have it distinctly understood that this is not an attempt on the part of the Committee to force the Association to adopt a view that every man who comes to the bar must, before he takes up his legal studies, have a college or university stamp. You cannot find a reputable law school in the northern states today that does not require at least a year's college work preliminary to its commencement. And that, it seems to the Committee, is some reason why the Association should take an advanced stand on this matter of bar examinations. A man who does not have the advantages of a good general education, or who is not an Abraham Lincoln, will never recover from that handicap. A man with a very poor legal education *may* become a good lawyer. For

that reason the Committee felt that emphasis ought to be put on the general education of the man, rather than on the legal education. There is a movement on foot to increase the number of years study for admission to the bar. It seems to me there is a very low standard required.

THE PRESIDENT: This report contains several recommendations. Do you wish to deal with them as a whole, or separately?

MR. MARTIN: I move we take them up separately.

THE PRESIDENT: The professor will then read the recommendation part of No. 1.

Dean Richards then read the recommendation as to general education.

THE PRESIDENT: What will be done with recommendation No. 1?

JUDGE FOWLER: How long does the rule require that a student should attend law school after his registration, under the present rule?

MR. RICHARDS: Three years. The present rules of Wisconsin requires two years in college and three years in law school. Of course some take three years in college.

I move the adoption of the first recommendation.

MR. BROSSARD: Does that require that a person who registers in a law office must show those attainments, or pass that examination?

MR. RICHARDS: All applicants for registration as law students. This first recommendation of course contemplates in a way a system of registration for law study; and at the time the applicant registers he must make proof that he has these attainments as to preliminary education.

MR. P. H. MARTIN: Mr. President, and Gentlemen of the Bar: The resolution, as I see it, is directed at a worthy purpose. But I do not believe that the bar is suffering from lack of mentality as much as it is from lack of character in its applicants. Graduation from a high school may mean nothing; graduation from two years of college study may mean nothing. At the present time men are permitted to graduate from high school, take a two years college course, then take the law course and pass no examination whatsoever. Men entirely as worthy—and the very course implies that they have more of methods, perhaps more of the stuff that

will make lawyers, educate themselves, take the required three years of study and then are compelled to pass the bar examination. In my judgment that is sufficient. I think if we are going to direct our advice to some subject matter it ought to be something of more urgency than requiring such discrimination and distinction between men who make application for admission to the bar. I think we are not suffering. Men who aspire to a position at the bar without the high school education and without college education, and who succeed in passing that examination, whatever it may be, are the kind of men we need at the bar. And I think the discrimination that exists today is unworthy. I think the man who passes through the law school should be compelled to subject himself to the same test that the young man does who takes upon himself to fit himself for the profession. It is an easy matter to go to the law school of Wisconsin, to enter the law school and take an examination at the end of each and every month, or at the end of three or four months in a particular subject while that subject is fresh in his mind, and have that standing accepted at the end of three years; and it is quite a different thing to take an examination at the end of three years and pass the test then covering the entire period rather than three months or six weeks. We will get nowhere by this kind of recommendation. It is not fair and it is not just, in my judgment. I for one will not say to the great mass of young men who are not fortunate enough to be able to go to the law school, and who perhaps have had to do a kind of work that was just as valuable to society, that precluded their graduating from the high school, as was the work of the young man who was fortunate enough to be able to go through the high school—I am not going to say to him that there is going to be a presumption raised against him because he is not able to produce the certificate of some high school or some college regardless of what the course is he takes for two years—an insignificant period of time—and say that he must be subjected to an examination covering high school studies, history, and classics, and other things. We should require rather a reasonably just and comprehensive examination in the profession that he purposes to follow, and require that he have a good moral character.

**MR. RICHARDS:** The present rules require a man should have a four years high school course.

**MR. MARTIN:** But it does not require the examining committee to go into the examination of such a course.

**MR. J. B. KEMPER:** Part of Mr. Martin's remarks were rather directed to discrimination in favor of graduates of the law school of the University of Wisconsin. Unless they have changed the rule within a comparatively short time the graduates of a law school, no matter of how high a grade, outside the state, have to pass the examination. Am I not right, Mr. Richards?

**MR. RICHARDS:** Yes.

**MR. KEMPER:** Graduates of the University of Illinois, of Harvard, or any law school, have to take the examination in this state. So it is simply a question of policy to be applied to schools in Wisconsin which are under the jurisdiction of the State of Wisconsin. It hardly meets the question of the report raised by the Committee. I take it that the report of the Committee is that it is to the advantage of the profession that in some way the general knowledge and intelligence of candidates for admission to the bar should be raised over what is now required, on the ground of course that you will get a better average in that way. That is the most that can be said. And I think from the discussion we have heard on the question it is for this body to act upon this recommendation. Now the question is, as Dean Richards says, whether the bars should be let down in the matter of general education on the chance that you will help the acceptable men, or whether the bar of educational requirements should be put up upon the theory that, while you might sometimes bar out an exceedingly good man who happened to be unfortunate enough not to be able to meet them, who might in later life become a very great lawyer—whether for the good of the profession at large we will not say we will attempt to put the bars high enough so we will get the best possible average. That is the real question which I think the members of the Association have to consider in acting upon the recommendation here.

The recommendation of the Committee on Education I understand amounts to this: that under rules laid down by the Supreme Court all applicants must have the equivalent of a



high school education; and they propose to add that all applicants must have the equivalent in knowledge of two years of a college course. It does not seem to make any difference, if I understand, how they acquire that knowledge. If a man is able to acquire it in six months of study, he does not have to show he has studied for two years; he simply shows he has those educational equivalents, no matter how obtained.

Now the question is, is it wise for us to recommend to the Supreme Court that they add those requirements, or leave it where it is? I am not expressing any opinion. That is the question before us; not any question of discrimination as between college graduates and those who are not college graduates, or as between young men who have passed the examinations of the State University, or other Wisconsin Schools, or otherwise.

MR. BROSSARD: Mr. Chairman: It seems to me that there is no valid objection to requiring one who seeks to enter a school that he shall be prepared to take his place in the regular classes and shall have attainments sufficient to enable him to go on with the classes, to the end that he shall neither waste his time nor that of the teacher or the class. For instance, a school may require as a condition of entrance that the student has had four years of high school and two years of college training. But it seems to me it is unfair to require of men of maturity, who have had business experience, men of developed minds, and as a condition of taking up the study of law upon private account and outside of a law school that they must register; and before registering, must pass an examination upon high school subjects and the first two years of college. There are a great many practicing lawyers who cannot pass an examination in botany, trigonometry, algebra or chemistry, or on many other branches taught in high schools; and men similarly equipped mentally ought to be able to satisfy an examining board that they are equipped to practice their chosen profession.

To speak concretely, I will instance C. T. Bundy, of Eau Claire. At the age of thirty, he was engaged in manual labor. When he decided to take up the study of law as a profession, it might have required a year or two for him to fit himself to pass an academic examination in high school and college branches, and had he been required to make that preparation,

and pass such examination, he might have been thereby dissuaded from the study of law and the profession thereby would have lost one of its very ablest men.

To one who applies to enter a school, it is only fair that he be required to pass an entrance examination. But it is very unfair to insist that a man who is about to enter a law office to work and study shall not do so or get credit for his work until he has passed a mental examination, much less one of the character mentioned. So long as he is seeking to educate himself on his own account and at private expense, he ought to have a free hand. When he applies for examination for admission to the bar, is time enough to examine him in the classics and foreign languages, and in the natural sciences, if he must be examined in them at all.

It seems to me all right to require evidence of good character, and if sufficient examination thereof cannot be made with the present machinery, then hire the Burns Detective Agency to find out all about it.

MR. BUELL: Mr. President, I do not agree with Mr. Martin in his statement that all applicants for admission to the bar should be examined, or that it is an easy thing for one to pass the examinations which are had in the University. I believe that any one who passes the examination in the University Law School and gets out at the end of three years is competent, so far as legal knowledge is concerned, to practice law. I was up at commencement the other day and counted those who were graduated; I counted, I believe, only 23 who were receiving either certificates or diplomas.

I agree with Mr. Martin in reference to the person who has the ability to pass these examinations which are given. I would as lief take my chances on the man who has the force of character, the ability, the initiative to go ahead and acquire a legal education which is sufficient to pass the bar examination, as the one who has chosen the route of taking a college course and also the law course. Now look at some of the concrete instances, as the last speaker has said. If you had had any such regulation as that, such brilliant men as H. M. Lewis of this city; Judge Pinney, one of the ablest lawyers we ever had in this state and a very able judge; that brilliant member of the Supreme Court, Judge Timlin; and dozens and dozens of men that you might all be familiar

with—many of them could have become lawyers, for they had in them the material of which lawyers are made; they were able by force of their character and their ability and initiative to go ahead and become distinguished members of the bar. And I would very much dislike to see this passed which would require any person to have at least the equivalent of two years college training. What is the equivalent of two years college training? May not a man who has worked his way from the very beginning have the equivalent of two years college training, and perhaps the equivalent of four years college training, and still never be able to pass an examination which would be given him along the lines that have been suggested. It seems to me that the present method is all right and the requirements sufficient; and I, for one, am strongly opposed to the resolution.

MR. MARTIN: I did not mean to say that the examinations of the law school were trivial, or anything of that kind. I did mean to say that we are pressing, emphasizing too much a matter that takes care of itself, viz.: the educational capacity of the individual. Just as Mr. Buell says: "What is the equivalent of a high school education?" The President of this Bar Association was at one time a teacher in a high school. How many of you gentlemen would take the chances of passing for a third grade certificate? I held one at one time; but I could not get one now. What is the equivalent of two years in college? A boy goes into college, studies chemistry, mathematics, and retains it perhaps for two years, or some other time.

I do not mean to say these things are not an advantage to him in building him up, and all that; but I do mean to say that the boy who struggles on the farm, or struggles in the lumber woods and aspires to become a lawyer, and studies with sufficient persistence and diligence for three years and then can express himself and pass the examination, ought not to have any more barriers thrown in his way. I think a fair and intelligent examining board can determine whether an applicant is fitted for admission to the bar at all. And after all, what do your percentages amount to at the end of the examination? In Milwaukee the superintendent of schools has recommended the abolishing of the marking of papers. For a long period of time we have expressed in the

high school, and expressed in the college, percentages. I dare say it is within your experience that many of the boys who go through school with a low marking are quite the superior in after life of those whose marks are up high; because the marking did not tell the truth, and the marking will not tell the entire truth with reference to applicants for admission to the bar.

I did not intend by discrimination to do more than reflect on the point I have named. We have only two law schools in Wisconsin. And I would suggest here, two years ago I spoke to the professor at Marquette saying, "Why don't you make application to the legislature to have graduates from your school admitted on presentation of their diploma, just as is done in the case of the Madison Law School?" He said, "If we could get that kind of legislation, we do not want it. We will have a better law school, and we will be likely to turn out better products if our boys understand that at the end of three years study here they must pass the bar examination." And he said to me that he understood the Michigan Law School was considering recommending that to the legislature of Michigan as a condition for admission to the bar. In the State of Indiana, I understand they take no examination at all.

**DEAN RICHARDS:** Of course this matter about law examination is very interesting, but it hasn't anything to do with the subject that is before us. We are not discussing whether a student should be admitted without examination, or not; but whether a lawyer needs to know anything about history, economics, sociology, etc., before he comes to the bar.

**MR. MARTIN:** What are the subjects you expect to recommend, or require for a two years college course? You have no control of that.

**DEAN RICHARDS:** I think all we have in mind, Mr. Chairman, is that a man who has had two years of college work—and that is pretty well standardized today, you know pretty well what that means—in any university or any college in Wisconsin, can register as a law student. Any man whose college has been a saw-mill, or lumber forest, or farm, can register as a law student on showing he is a man of sufficient intelligence to have read and familiarized himself with some of the important facts of history, and to know something of the laws governing social forces—economic forces—something

Judge Winslow has said a twentieth century lawyer has to know; we look upon that thing as part of his general training; but what he has got to know is his "stock in trade". It seems to me it is not fair to tell us about a lot of men who have reached eminence in the profession without attending high schools or colleges. Who knows but Judge Timlin and such men would have prepared themselves under these rules if such rules had been in force. I do not say the only way to make a man is to go through high school or university; but I do believe we are making rules for a group of men. We are not making rules for exceptional men. Most men are not geniuses, and our rules are for the common run of men.

MR. BIRD: I am not clear as to just what you mean by the equivalent of a high school course and two years in college. Do you mean by that a specific knowledge of standard courses, as we call them standard, of that education; or do you mean general intelligence and knowledge, and capacity equivalent to the average capacity of such a one having taken that course of training?

DEAN RICHARDS: Of course, Mr. Chairman, the word "equivalent" is a much abused word. I suppose I should say it meant a man who by his reading and knowledge of economics, and history, etc., shows he is a man of intelligence; not that he has a great specific stock of information. It seems to me that is to be worked out by taking an examination to show that he is a man of intelligence and general knowledge.

PROF. SMITH: Mr. Chairman, might I say a word? "The equivalent of two years college study" can tell me whether a man is of sufficient capacity. It has been the law for many years. I think the administrators of the law have not found any particular difficulty in arriving at the interpretation of that provision.

I do not want to discuss the provisions of the recommendation, which are sufficiently obvious, and to all interested on both sides have often occurred to members of the Association. But I do want to call attention to one fact that ought not to be lost sight of, that this recommendation is the recommendation adopted by the American Bar Association. And I do not see how the Committee on Legal Education could have done otherwise than give this Association the opportunity to act upon it. And it seems to me this Association ought not lightly

to differ with the judgment of the American Bar Association on such a question.

**MR. ———:** Is there any state in the Union now where this standard is insisted on, where it is a standard that is required?

**DEAN RICHARDS:** I suppose not. As Mr. Brossard suggests, that it keeps many good, worthy men from the profession, is a good argument; but it is not as good an argument now as it was thirty years ago.

**MR. BROSSARD:** It not only keeps them out of the profession, but it keeps them from studying law. Blackstone taught that the liberal education of an Englishman should include at least so much of the law of England as is covered by his commentaries; and I would rather encourage men to study law in any old office they can find than to discourage them. A young man with ambition and application who works a year or two in a private law office is likely to discover or be told, if such is the fact, that he has no aptitude for the law and will abandon it as a vocation. On the other hand if he is a genius or even has moderate talent therefor, it will be revealed to him or observed by the master, and he will feel encouraged to go on in his course and will ultimately adorn his chosen profession. Such men are needed in the law. The profession will never be crowded at the top.

**MR. DOUGHERTY:** Why wouldn't it be well enough for the Association to say an applicant should have the requisite knowledge at the time he takes his examination? What is the philosophy underlying the requirement that it be done when he registers? Why would it not be satisfactory if he passes it at the time of the examination?

**THE PRESIDENT:** Dean Richards, have you an answer to that?

**DEAN RICHARDS:** It depends on the view you take of this preliminary education. It seems to me if you say a man, before he begins his professional studies, shall have certain attainments, it seems absurd to say, as some of the schools do, "You must have two years of college; but you can have your two years of college while you are studying law." If certain attainments are considered essential to correctly comprehend the law, they should precede. If you figure in his profession he should know something of economics and his-

tory for the purpose of sharpening his intelligence, I should say a show of that knowledge would be sufficient at the time of his examination.

THE PRESIDENT: I suggest it is getting late, and if you are not ready to vote upon this question now, it might be laid over as unfinished business.

MR. BIRD: I move to lay the recommendations of the Committee on the table for the present; because the American Bar Association will consider, at its next meeting, the general qualifications which they will recommend as a uniform rule. I am a member of that Committee which has been considering the rules which have been adopted by the local associations. I think we better not take any action on that until the American Bar Association determines whether it will, or will not, recommend what they believe are uniform proper rules.

THE PRESIDENT: It is not your purpose then to have it taken from the table during this meeting?

MR. BIRD: No.

Motion seconded and carried.

THE PRESIDENT: The Chairman of the Publication Committee is not here; neither is the chairman of the Necrology Committee. They will probably be here tomorrow, and we can then take that up as unfinished business. I think, however, that we ought to take up one more order of business before adjourning this evening.

The reports of Special Committees better go over till tomorrow. The next order of business is the nomination of officers. There ought to be a Committee on Nominations, I presume, appointed, or chosen, so that that work may be ready for disposal tomorrow afternoon.

PROF. SMITH: I move that a Committee on Nomination of officers be appointed.

Motion seconded and carried.

THE PRESIDENT: I will appoint as such Committee Burr W. Jones, Senator Whitehead, Mr. Kemper, Judge Vinje and Judge Beglinger.

(Adjournment taken until 8 o'clock P. M.)

At the evening session Hon. Harry Olson, of Chicago, was introduced, and read a paper on the subject of Disease and Crime. (See Appendix, p. 264.)

After which a reception was held for the members of the Supreme Court, at the Governor's rooms in the Capitol Building.

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Session Tuesday, June 28th, 1917, 9:30 A. M.

Meeting called to order by the President.

THE PRESIDENT: There are three on the program for the subject first up for discussion this morning, led by Mr. Kemper. But you will understand that it is really a "free for all", and I understand we have the necessary time to give each member an opportunity to have his say. The subject is,

"How May the Wisconsin Revised Statutes be Improved and What Should Constitute a Proper Revision of the Statutes."

Mr. Kemper has the floor.

MR. J. B. KEMPER: Mr. President and Gentlemen of the Association: I deeply appreciate the honor that has been conferred upon me by your President in asking me to lead this discussion. At the same time in justice to myself I want to say that I do not see that I have any special qualifications over any other member of the Association on this subject. While appreciating its great importance to the lawyers, my own knowledge on it is simply confined to that which any practicing lawyer has from the use of the statutes in his own practice.

Address read. (See Appendix, p. 277.)

THE PRESIDENT: Mr. Kearney has written that he is unable to be present, but Mr. Thompson of Racine has kindly consented on short notice to substitute in his place. Is Mr. Thompson present? (No response.)

Mr. Thompson not answering the call, I see that Mr. H. O. Fairchild is present, who is next in order for the discussion.

Address read. (See Appendix, p. 292.)

THE PRESIDENT: Upon request, Mr. Lyman J. Nash has kindly consented to further discuss this subject.

Discussion by Lyman J. Nash, without notes. (See Appendix, p. 358.)

MR. NASH: Now that is all that occurs to me in this off hand discussion to say. But if there are questions any of the



gentlemen here desire to ask, I will try to answer the best I can.

THE PRESIDENT: You will be here at the session this afternoon?

MR. NASH: I don't know. I will try to.

THE PRESIDENT: If we have time this afternoon for further discussion of this subject we will call it up. The next number on the program is the following subject: "The Right of Individual States to Pass Local Laws in Conflict with United States Treaties with Foreign Powers."

C. B. Bird of Wausau.

Address read. (See Appendix, p. 298.)

(Recess taken until 2 o'clock P. M.)

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Afternoon Session, June 28th.

Meeting called to order by President Goggins.

THE PRESIDENT: We yesterday passed the report of the Necrology Committee. Is Mr. Wild here today, the chairman of that Committee, or some member of the Committee who has the report?

MR. BAGLEY: My name appears on that Committee. It has been our policy to have the various members report to the chairman, and the chairman to make the report to the Association.

THE PRESIDENT: Let me suggest that a report be gotten up later and given to the secretary of the Association.

There is also the Committee on Publication. Mr. Hayes, has that Committee any report to make specially?

MR. W. A. HAYES: Mr. President, the Committee held a meeting and did its work in connection with the Secretary of the Association. It may be said that the Secretary did more work than the Committee.

THE PRESIDENT: The Committee on Reform of Judicial Procedure. Mr. Bird, Chairman of that Committee.

MR. BIRD: I have no written report; but just let me review what the Committee has done. The American Bar Association some years ago adopted a resolution authorizing a move to obtain authority for the United States Supreme Court to adopt rules for procedure in legal actions just as they

have done in equity actions, and they appointed a committee to accomplish that. That, you appreciate, required an amendment of the Federal Statute, because the Federal Statute now requires that legal actions shall conform to the practice of the courts in the State where brought. The American Bar Association asked each State Association to appoint a Committee to assist in that work. This is such Committee appointed by our Association. Measures have been taken to secure the passage of such an Act through Congress, repealing the present statute. That measure usually met opposition in the Senate; it passed the House a number of times. At the last session of congress such a measure did pass the Senate; the opposition of senators who were opposed to it was allayed and they agreed to the measure. However, at that same congress there did not pass in the House a bill in all respects like the Senate bill. The matter therefore fell at the last session of congress. I think the American Bar Association intends to continue its efforts. Now this Association can continue the Committee, or appoint another, to co-operate with them, or drop it.

I may say that the Federal Statute seems to be more of a scare than a help to the ordinary lawyer who practices much in the State Courts and less in the Federal Courts. The exceptions to the rule by which State practice is used in the Federal Courts are as great as its application; so it does not help the ordinary practitioner very much. It is believed by some that if the Supreme Court of the United States should finally establish rules of practice in common law actions as they now do in equity, that those may in time serve as a basis, or a nucleus around which may gather efforts to secure uniform practice throughout the United States.

It was moved that the Committee be continued, which motion was seconded and carried.

THE PRESIDENT: Now the Committee on Honorary Membership. The Chairman of that Committee is Mr. Doerfler.

MR. DOERFLER: Mr. Chairman, this Committee, appointed by the chair, consists of Judge Park, Mr. Blake and myself. We had a meeting of the Committee this morning, and all the members of the Committee attended except Judge Park, who is not here. We took into consideration the 4th section of the Constitution of this Association for the purpose of recom-

mending a substitute, or some amendment to that provision. (Reads provision).

It appeared to members of this Committee that members who had paid dues for fifteen years ought to be exempted from further payment of dues, but they ought not to be made honorary members and we have come to the conclusion that honorary members ought to be elected by this association. An honorary membership ought to be based on some special service, or special distinction of the proposed honorary member. We have therefore drafted this as a substitute for Section 4 which I read.

(Reads substitute proposed.)

To the Wisconsin State Bar Association:

Gentlemen: Your Special Committee appointed to consider the advisability of a revision of Section four of the Constitution of the Association, do hereby report as follows:

Your Committee are of the opinion that all members of the Association who have paid dues for more than 15 years shall be considered or remain active members of the Association, and shall not be subject to the payment of annual dues or assessments.

Your Committee are further of the opinion that it is desirable to maintain as large an active membership of the Association as possible and we, therefore, recommend that honorary membership shall be confined to such members or non-members who by reason of special service or distinction are recommended for honorary members by the Executive Committee of the Association and whose recommendations are adopted by the Association.

We, therefore, submit and recommend the adoption of the following amendment to the Constitution.

*Resolved*, That Section four of the Constitution of the Association be and the same hereby is amended by substituting in lieu thereof the following:

Section 4. All members of the Association who have paid dues for 15 years or more, shall be active members of the Association, but shall not be subject to the payment of annual dues or assessments. The Executive Committee of the Association may from time to time recommend for election by the Association as honorary members, any member or non-member of the Association, such recommendations to be based

upon some special service or distinction of such proposed honorary member, and such person when elected shall become an honorary member of the Association and shall be exempt from the payment of all dues and assessments. All members of the Association who have heretofore been elected as honorary members by reason of having paid dues for a period of 15 years, from and after the passage of this amendment shall be considered active members exempt from further payment of dues and assessments.

Any member of the Association may for special reasons on notice of a member of the Association, be relieved by the Association from the further payment of dues and assessments. All active members relieved by this section or the Association from the payment of dues and assessments and all honorary members may participate in all the deliberations of the Association except as to financial questions.

All provisions of the Constitution in conflict herewith are hereby repealed.

Dated Milwaukee, June 28, 1917.

Respectfully submitted,

CHRISTIAN DOERFLER,

CHAUNCEY E. BLAKE,

Members of Special Committee on Revision  
of Section Four of the Constitution.

MR. DOERFLER: Since dictating this it has occurred to both Mr. Blake and myself that a provision ought to be inserted herein exempting those members of the Association who are, or will be engaged in the active service of the United States in the present war. I will further state that the recommendations in this report are somewhat radical, and it appeared to us that it would be a good idea to have this proposed amendment printed in the proceedings and acted upon at the next meeting of the Association. I therefore make that motion.

MR. SANBORN: If that is to be done, I desire to submit an amendment to that to be considered with the report; that is, to strike out the words "fifteen" where they occur in the first part and insert "twenty-five." I think fifteen years is entirely too short. I will be in the inactive class myself in a short time under that, and I don't know any reason why I should be exempted from paying dues.

MR. DOERFLER: I move that the report be placed on file and laid over for further action at the next meeting of the Association.

MR. SANBORN: And I wish to give notice I will offer an amendment when the report is considered by changing the word "fifteen" where it occurs in the first part, and to insert instead the words "twenty-five".

Motion seconded and carried.

THE PRESIDENT: The next is the report of the Committee on Retirement of Judges. Mr. Hayes, Chairman of that Committee.

MR. W. A. HAYES: Mr. President and Gentlemen: As is well known, this Committee came into existence at the Superior meeting two years ago; and at that time it was particularly authorized to make an investigation of the subject. A rather extensive investigation was carried on, and report made at the meeting at Oshkosh one year ago. The report covers more than fifty typewritten pages, and is part of the files of this Association. In the investigation we covered practically all of the civilized countries of the world, and found that in nearly all countries some provision was made for retiring judges on compensation for a fixed period of service. At the meeting a year ago the Committee was continued in existence with authority to secure the introduction of a bill. Senator Bennett, who is serving in the State Senate, is a member of the Committee, and the bill was introduced, known as 303 S. Now this made no provision for the retirement of Circuit Judges, but pertained only to the retirement of judges of the Supreme Court. It was the intention of the Committee, particularly your chairman, to prepare a more comprehensive bill; but it seemed inadvisable to confront the legislature with two bills, and so the Committee put itself back of 303S as the Committee bill. There were three hearings upon this bill, one before the Senate Judiciary Committee, one before the Joint Committee on Finance and one before the Assembly Judiciary Committee. As Chairman of your Committee I appeared at two of the hearings—before the Senate Judiciary Committee and before the Joint Committee on Finance. The bill passed the senate by a vote of 20 to 13, every senator being present at the time and voting on the bill.

It then went to the assembly in the usual course, and met disaster there, having been defeated in that body.

When the Committee was brought into existence two years ago it was done so because it was thought the bar should take this matter up. It is a rather delicate matter for members of the bench to handle. The experience in handling 303S before the present legislature confirms the correctness of the idea that brought this Committee into existence. The first question was, and is: Is the step a desirable one? I think that members of the bar generally, and I know the chairman of your Committee, after the exhaustive investigation made was finished, thought the step a desirable one, and we based our conviction upon the proposition that it is protective of the public service. We have learned something in connection with what occurred with 303S. Two members of the Court appeared in support of the bill. After reviewing the past acts, I am inclined to think that was a mistake. This is a very peculiar world, and sometimes the legislature acts in a strange way. And after one of the hearings—I think before the Joint Committee on Finance—there were two members of the Court who addressed the Committee, and your chairman and others appeared—somebody was peddling in the room around “There are some railroad lawyers and two judges of the court trying to put that thing over.” We have got to face those things. Now that sort of argument is, of course, grossly unfair.

The particular bill, 303S, provides for the retirement of the judges of the Supreme Court as a commission. That bill seemed to me to meet with a good deal of favor from members of the Court. I was not in favor of that, personally, at the start, and I think that I shall have to return to the original position and hold that a bill which provides for straight retirement, say at the age of 65 after a period of fifteen years service, half pay, is perhaps more desirable and likely to command much greater support in the legislature.

I found that some very able lawyers are prone to think that retiring judges of the Court and making them Court Commissioners, will somehow open a back door to the court. And I know one of the very able members of the Court, not now serving, was opposed to a bill of this character for the same reason. Many members of the legislature became suspicious

of a bill of that kind. The socialist members of the last legislature threw their influence solidly, I believe, against the passage of this bill. They saw, or thought they saw, some strange or peculiar advantage to members of the Court in a bill of this character. You know the Federal Judges have for years enjoyed the opportunity to retire after fulfilling two conditions; ten years of service, and attaining the age of 70. There is no reason why the State of Wisconsin should not follow substantially that same procedure. Canada, I believe, provides that judges may retire at, say 15, and draw a proportional rate; they may retire under other conditions at twenty, and under still others at twenty-five, and under still others after thirty years of service. We might perhaps work out a bill that would permit a judge to retire at 60, if advisable, after ten years of service, and draw a certain compensation; but not as great a compensation as if he served fifteen years and reached the age of 65. We might provide still greater compensation if he served twenty years and reached the age of 70. Then comes the question whether a bill ought to provide for compulsory retirement.

I think that the life of the Committee ought to be continued, Mr. President, and that it ought to be instructed to proceed with its work, not merely for one year, but for two years, if that is consistent with the constitution and by-laws, and bring in, or cause to be brought into the next legislature a bill that will provide for the retirement not only of the judges of our Supreme Court, but of the judges of the Circuit Court; a comprehensive bill based primarily upon the idea that such bill is in the interest of the public service. The salaries of judges in this state—take the Supreme Court judges—was first established in 1853. It is 64 years since that time. During those 64 years the legislature has fixed the salary six different times. During the same 64 years it has fixed the salary of Circuit Judges six different times—on an average once each ten years. The compensation has gone steadily up. Most of you will agree it is not now as much as it ought to be. There were those who wanted to bring a bill into the legislature to increase the salary. I think that is inadvisable. I think the next step, instead of being like the six preceding steps, should be a bill to provide for the retirement upon compensation, upon the idea that it

is in the interest of the public service, and that the compensation which a judge may receive after retiring is but a part of the compensation actually earned while serving; that it ought to be considered in the light of deferred payments for services actually rendered. I think the bar should put itself back of this. It is a delicate thing for the judges. Then there is this practical disadvantage: where judges who are serving and who may be eligible, or may become eligible to retire under the bill introduced, appear and take part in it, the conclusion is very likely to be reached by a substantial number of members of the legislature that the bill is being pushed through for the benefit of particular individuals. That is not the idea that brought the Committee into existence; that is not the thought of the investigations. There is a purpose to be served. There will always be in the public service judges who may, when the bill is passed, immediately become eligible to retire under its provisions. But the bill is not being put through for the benefit of any particular one; and it were better to pursue a course to disassociate that idea from the movement in support of the bill. During the last legislature, I understand, while the bill was up in the assembly, some members made rather sarcastic and unwarranted arguments on the idea that this bill, 303S, was being railroaded through for the benefit of particular men. That is not the fact; and we ought not, I think, to give any excuse during the next session of the legislature for making an argument of that sort.

I therefore move, Mr. President, that the Committee be continued for two years, with instructions to prepare a bill embodying substantially the idea presented in this verbal report, and cause the same to be introduced in the legislature of 1919, and use every legitimate effort to bring about its passage; such bill to cover not only the judges of the Supreme Court, but the judges of the Circuit Court.

And further, that this Committee be given power to add to its numbers, if deemed advisable, one member of this association from each county in the state, so that it may have an effective working force.

Motion seconded.

MR. H. J. KILLILEA: To supplement what Mr. Hayes has said on the proposition, I agree with him heartily that the experience of the last four months with the legislature of



Wisconsin warrants his statement that there is a greater probability of securing the enactment of a bill providing for the retirement of judges on a salary, and not as commissioners. The argument made against the bill 303S on the floor of the assembly, as well as the senate, was that it provided a system of pension which some of the members could not justify themselves in voting for before their constituents. After the defeat of that bill, two weeks ago yesterday, the Judiciary Committee of the Senate reported a bill similar to 303S with the salary feature entirely eliminated, making it a simple commissioner to be paid only for services rendered. The very same members opposed the second bill in the senate that opposed the first bill. That bill passed the senate by substantially the same vote. It was defeated in the assembly, the same persons opposing it that opposed the bill carrying with it the salary provision. I believe, as Mr. Hayes said, it will be easier to get such legislation through that carries a straight salary retirement provision on half pay. In the State of Massachusetts that is the provision; also the State of Connecticut. I understand they both provide for retirement on half pay. I think the work which this Committee has done fully justifies their retention, with the addition of members as suggested.

MR. COE: Mr. Chairman, just because I would like to have the people present vote on this understandingly, I would like to state my position in opposition to the bill, which possibly will be unpopular here. It seems to me that it takes a great deal of nerve to ask a legislature that have to devote a half year's time at their own expense to the service of the state, to pass a bill pensioning the people with the finest, the high priced jobs and the most desirable positions in the state. And I feel very sure that if I was in the legislature I should be just socialist enough to vote against Brother Hayes' bill if he introduced it. It does not seem to me fair to commence the pensioning at the top. I say my position is probably unpopular, but I wish at least each one here would vote thoughtfully on the question.

THE PRESIDENT: Does any one else here wish to speak upon this matter? You have got the time. If you have opinions, now is the opportunity to express them.

MR. HAYES: Mr. President, just to answer Mr. Coe's ob-

jection. The objection Mr. Coe made was one that was made and pressed at the hearings on the bill before the Senate Judiciary Committee, and Joint Committee on Finance. There were those who said if we are going to begin the pension system—I don't like that term, I don't think it describes what we propose to do—they say "Let us begin with the working man." And we reply that legislation of this kind—legislation of any kind is a matter of growth. Now this, while it does in a sense begin at the top, and in another sense it does not—it begins with a few; and what is proposed to be done may be subjected to the tests that all sound legislation is subjected to. And to those who say "let us have a bill for the laboring man", we say "Let us furnish you a few, and let you study. Let us see how it works out. And then if it works out, apply it by degrees; let us carry it forward little by little." Brother Coe's objection wholly ignores too the fundamental proposition underlying the proposed bill, that it is in the interest of the public service. We have had, and we shall have again judges in the state who will hang out long after the public service would require their retirement, because they have been long in the public service and cannot retire because they cannot live without the salary. I never hesitate to refer to the case of Judge Webb, because Judge Webb was the soul of frankness and candor, an extraordinarily fine character, and were he living and here he would unhesitatingly and frankly tell you about his financial state. Isn't that so? He never got too old to have the simplicity and truthfulness of the child. And for two or three years before his death he was not equal to the work in his circuit. He said to me, as I have no doubt he said to members of the bar with whom he came in contact, that he could not retire because he could not afford to retire. That is another phase of it. And there is a tendency in the state each spring to develop candidates among the younger men for the purpose of unseating the older men; and the argument is put forward "this judge is too old; he ought to be retired."

This is not the time to go into all of the arguments that may be made in support of this proposed measure; it is not the time to analyze all of the material that was gathered in the exhaustive investigation covering all the countries of the world. But we may take for granted that if in nearly all the

other countries—yes, all, you might say, and if our own country in the Federal service has seen fit in its maturer wisdom to provide something of this kind, there must be solid arguments in support of it; and there are. And I believe that every member of the bar present will come to be a supporter of a bill of this kind once he has made the study of it that the Committee has made. We seek only an improvement of the public service in seeking to enact in the law the idea presented; nothing else. And we propose, instead of raising the salary again and again, to reserve that salary and pay it after retirement. In other words, we propose to pay the judges in two ways; a stipulated salary per annum while serving, and a stipulated salary per annum after retiring, both to cover the services rendered. Our Chief Justice has now been upon the bench for twenty-six years; and I suppose we never had in the history of the Wisconsin judiciary a man that had a warmer place in the hearts of the members of the bar than the present Chief Justice. If you figure out, you will find his salary for the entire service has been less than \$6,000 a year—it has averaged that perhaps; and that is rather small for the Chief Justice of a great state living in the capital city of the state, who is expected to do the work of a judge of the Supreme Court, and who does it. We must bear in mind, too, that a judge of the Supreme Court (and to some extent the same might be said of the judges of the Circuit Courts)—no judge of the Supreme Court can live in the City of Madison upon the same salary, or the same income, that a strictly private citizen would live on. We expect some things of them that we do not expect from the merchant, or the professional attorney, or physician, or banker, or manufacturer. He has a certain social status to sustain; and we propose to look those things right in the face. We expect them to be members of the Association; we expect them to go to the American Bar Association; we expect them to go hither and thither and to hold up their end; and in my judgment it will require a thousand dollars a year more for a judge of the Supreme Court to live in substantially the same way in the City of Madison than it would require of a strictly private citizen. That is only one of the smaller arguments; but while we are at it we might as well consider those things. You, Mr. Coe, will be satisfied when you have looked into it;

and all of your way of thinking will come to think as we think, when you know as much as we know; and I do not say this egotistically.

MR. COE: I made no kind of argument as to the salary of the Supreme Court; I made no argument against retirement at a given age. Neither of those refer to his proposed retirement fund. But it seems to me that the retirement fund is unfair. If he simply wants it as an experiment, I will say the school teachers are trying that out at their own expense. And I have no objection to the judges of the Supreme Court trying it out if they want to among themselves. But it is not fair, as I said, to start a pension fund at the top. I am just socialist enough so that is where it catches me. We are taking the highest, best paid people we have and propose to retire them on a pension; and more people who serve to the best of their ability all their lives have to retire, not only in poverty, but without any such help.

MR. BUELL: As I understand Mr. Hayes, it provides for retiring at the age of 65 years?

MR. HAYES: The precise age is a matter the legislature might have its own view of. We propose to apply to the state judges substantially the existing provision of the Federal law.

MR. BUELL: That would permit them to retire at 70. I personally am in favor of such recommendation, although I would not have it take effect at 65 years of age. If it did, it would certainly take Judge Winslow, and some of our best judges we have at the present time, and men whose services we could ill afford to lose.

MR. HAYES: It is not our intention to suggest a particular age at this time.

THE PRESIDENT: Was it your intention, Mr. Hayes, to suggest a compulsory retirement?

MR. HAYES: No.

The motion being put to vote was carried, and the Committee continued.

THE PRESIDENT: I call up a matter here now; it is somewhere about a year—I don't remember the exact dates—the death of the late Justice Timlin. It would be meet and proper for this Association at this time to take some step for the presentation of a proper memorial upon his life to the Supreme Court at the opening of its next term. I understand

that it was his wish when the proper time came that Mr. P. H. Martin serve in that capacity. If it is agreeable to the Association, will someone make the proper and appropriate motion?

MR. KILLILEA: Mr. President, I move that the President appoint a committee to carry out the suggestion of the President and present the memorial to the Supreme Court. I might add, it was well known that it was Judge Timlin's request that no services be held, either by the local bar or the State Association, until one year had elapsed after his death.

MEMBER: In speaking of the appointment of a committee, did you intend to mean more than the appointment of one person?

MR. KILLILEA: I did have that in mind.

Motion seconded, and carried.

THE PRESIDENT: The Chair at this time will appoint Mr. Martin for that service.

THE PRESIDENT: Is the Committee on the Secretary's report ready to report. Judge Reid is not here, but I believe Mr. Butler is.

MR. BUTLER: Mr. President, I have not had an opportunity to confer with Judge Reid as to the particular matter which I understood would be taken up by that Committee, which was whether this Association should authorize or direct the printing or hanging in the court rooms of the various counties the canons of professional ethics adopted by the American Bar Association.

THE PRESIDENT: We will defer the matter then until later. Is the Committee on Treasurer's report ready to report?

MR. BROSSARD: The Committee has examined the treasurer's report as presented here yesterday, and find the same correct in every particular; and I move that the report be adopted.

Motion seconded, and carried by unanimous vote.

THE PRESIDENT: Is the Committee on Nomination of Officers ready to report?

MR. BURR W. JONES: Mr. President, the Committee having this matter under consideration are ready to report. With respect to the President of the Association, we had no difficulty. We were unanimous in the belief that since an eminent judge who has served the state very faithfully for many

years, is about to leave the bench, it would be a graceful thing for us to recommend the nomination of Justice Marshall for President of the Association. (Applause).

As to Vice-Presidents, we are recommending a few changes. One or two of them were suggested by the officers themselves; and unless desired, I will only read the names of the changes which are suggested. From the third district we suggest Frank Stewart; from the fourth district Mr. L. G. Nash; from the tenth district Mr. T. H. Ryan; from the twentieth district Mr. E. C. Eastman. For secretary and treasurer we recommend the continuance of George E. Morton, of Milwaukee, and of the Assistant Secretary Arthur A. McLeod, of Madison.

There are only two chairmen of Standing Committees whose terms expire, namely, Robert Wild and W. A. Hayes. We suggest that they be continued.

MR. HAYES: Mr. President, I rise to a question of privilege. Mr. Jones, may I suggest as to Vice-President for the Second Judicial Circuit, I being the one at present, that there be a change made there, and that W. H. Timlin, Jr., be substituted as Vice-President for the second judicial circuit.

MR. JONES: I presume the Committee would be glad to acquiesce, if Mr. Hayes desires to retire.

THE PRESIDENT: Any miscellaneous business?

MR. SANBORN: A special resolution was brought to my attention from the American Bar Association. The President and Secretary of the American Bar Association sent a letter to the members of the general council and to the presidents of the various State Bar Associations, asking that some action be taken in regard to the work of the members of the bar who are engaged in service in the present war. And after conference with some of the officers of the Association, I have prepared a resolution which I will present, and move its adoption.

(Reads proposed resolution.)

WHEREAS, Many Wisconsin lawyers have already entered the army or navy of the United States or are engaged in some other form of war service and it is likely that many others will do so, and

WHEREAS, It is desirable that the sacrifices made by such lawyers should be kept as small as possible, therefore be it

*Resolved*, By the Wisconsin State Bar Association that every effort should be made to preserve the practice intact of those Wisconsin lawyers who engage in any form of war service. That to this end all members of this Association should as far as possible do the work of such absent lawyers, making a reasonable arrangement as to the fees therefor. That any attorney doing work for any such absent lawyer should add after his signature to pleadings, brief or other documents "for A. B. now serving with the United States Army (or otherwise as the case may be)", and when appearing in court for any such lawyer should so state and give the reason therefor; and that reports of cases should state when the attorney of record is appearing for any such absent lawyer and for what reason.

MR. SANBORN: Now I do not think it needs any argument. I will say that substantially the same action was taken early in the war by the British Bar Council; and of course the question does come up in this country to the Bar Associations. It seems to me the important element in this is a recognition of the fact that if any lawyer is unable to attend to his practice because of the work which he is doing because of the war, it is the duty of the other members of the bar who are not doing that work to attend to that practice for him; and to do that with the direct recognition of the fact that it is his practice, his case and not their case; and that when he returns, if he does return, his practice shall go back to him; and that none of us who do not enlist, who do not engage in work outside of our home work during the war, should take away the practice of those who do.

I move the adoption of the resolution.

Motion seconded, and resolution adopted unanimously.

PROF. SMITH: I listened yesterday with interest, pleasure and profit to the address of the President, as I think most of you did. I do not know when I have listened to a more suggestive and good address than that of yesterday. It was based upon long and pains-taking investigation. It seems to me it would be too bad for this Association never again to recur to the topics covered by that address, to leave it without any further consideration and take up something else which we have not yet considered. I wish therefore to offer a resolution, which I will leave for the judgment of the Association:

*Resolved*, 1. That the annual address of President Goggins be made the subject of special consideration at the next annual meeting of this Association.

2. That the Executive Committee be directed to refer it to a Special Committee, or Committees, for consideration and report as to what, if any, action by this Association it desires. Such recommendations to be printed and sent to the members of the Association not less than twenty days in advance of the meeting of the Association.

3. That if financially feasible a copy of said address be sent to all members of the bench and bar of this state, whether members of the Association or not.

I offer that resolution for the consideration of the Association. It seems to me the topics covered were most fruitful topics for consideration of the next meeting of the Association, and I move the adoption of the resolution.

Motion seconded by several members.

JUDGE REID: Mr. President, last year various delegates from various state bar associations of the country were invited to a conference on the day before the American Bar Association met in Chicago, and the President of this Association and myself were the delegates representing this association. The conference was on the question of how to draw the state and local bar associations into closer relationship and organization with the American Bar Association. A result of that conference was a recommendation which was adopted by the American Bar Association, which was read by the secretary yesterday, to the effect that the president of each state bar association was made a member of the General Council of the American Bar Association, and the Secretary of the State Association a member of the local council of the American Bar Association for the state, provided the State Bar Association accepted those provisions. We accepted those provisions yesterday. There was one other amendment adopted which I will now mention.

The result of that conference a year ago gave such encouragement to the American Bar Association that it is now proposed on the part of the American Bar Association to call another conference of delegates of the various state and local bar associations to be held at Saratoga Springs on the day before the meeting of the American Bar Association, to-wit,



September 3rd, for the purpose of considering three particular matters. These are:

- (1) How can bar associations help the public?
- (2) How can bar associations help each other?
- (3) How can bar associations help to raise the standards of the profession?

It is requested on the part of the American Bar Association that each State Bar Association appoint in some way three delegates to that conference. I have in my hand a request of the American Bar Association to that effect. It is also accompanied by a letter of a Committee on Arrangements. It is also accompanied by a letter of one of the General Council, Stiles W. Burr, of Minnesota. I suggest we ought to join in that conference. The conference last August was productive, I think, of some good, and has drawn this association closer to the American Bar. I think it is important we should join in this conference. I suggest that three delegates be appointed by this Association for that conference; and as a method of appointment I suggest it be placed in the hands of the incoming President of this Association. I make a motion to that effect.

Motion seconded and carried.

Judge Reid then submitted the following written report:  
To the Wisconsin State Bar Association.

A year ago the American Bar Association invited each state and local bar association to send two delegates to a conference at Chicago just before the Annual meeting of the American Bar Association, to consider ways and means of drawing into closer co-operation with the American Bar Association every state and local association. The undersigned were appointed by President Hudnall as such delegates and attended the Conference on August 29, 1916.

The result of the Conference was a recommendation to the American Bar Association, which was adopted by the Association, to amend its Constitution in three particulars:

First: By making the President of each State Bar Association which accepts the provision, a member of the General Council of the American Bar Association, provided he be a member of the American Bar Association. This General Council previously consisted of one member from each state,

and to this number the Amendment adds the President of each State Bar Association which accepts the provision.

The General Council is a Standing Committee of nomination for office in the American Bar Association and its nominations may be considered practically an election.

Second: By making the Secretary of each State Bar Association, which accepts the provision, a member *ex-officio* of the Local Council for each state, of the American Association. To this Local Council is referred all applications from its state for membership in the American Association and, with the members of the General Council, it constitutes a Committee for each of the respective states to further the interests and opinions of the American Bar Association in such ways as shall be suggested by the Executive Committee.

Third: By providing that the Executive Committee of the American Bar Association may arrange with State Associations to extend to their members the American Association's referendum system on questions of national importance affecting the substance or administration of the law, thus reaching out to get a more general opinion of the Bar of the Country, on such questions, and extending the influence and the power of the opinion of the bar on national questions.

We recommend that the Wisconsin State Bar Association accept these provisions of the Constitution of the American Bar Association and authorize its President and Secretary to act under them, and that we signify our desire to come into the Referendum system.

Respectfully submitted,

A. H. REID,

B. R. GOGGINS,

Delegates.

THE PRESIDENT: Judge Reid, let me suggest this for your consideration—an instruction to the Secretary to notify the Presidents of the respective County Bar Associations as to what their privileges are with reference to delegates also.

JUDGE REID: The report filed with the Secretary includes a request which I did not state here, that each local bar association send two delegates. It is desired that each local bar association be represented by two delegates at that conference.

JUDGE BLUM: I think the local bar associations have been notified. I received a letter such as the one Judge Reid has.

MR. J. M. WHITEHEAD: Mr. President, I offer this resolution:

*"Resolved by the Wisconsin State Bar Association in annual meeting assembled at the State Capitol this 28th day of June, 1917, that we tender to President Wilson our cordial and unwavering support in his devoted efforts to maintain the honor of our country in the tremendous world conflict that threatens the continuance of civilization."*

I move the adoption of that resolution. (Applause).

Motion seconded, and carried by unanimous vote.

MEMBER: Mr. President, is not the discussion that was had this morning on the statutes—is that in order at this time? It was continued until this afternoon.

THE PRESIDENT: I think as we have reached the hour for the next subject, we had better proceed with that. The subject is "Are the Present Aims and Methods of Organized Labor Contrary to Public Policy—More Particularly from a Legal Standpoint." We have with us to discuss that subject Mr. Walter Gordon Merritt, of New York City, who, by ability and experience in the litigation of cases covering that important proposition, is particularly fitted to present that to us. He has come a long ways for the purpose, and I take great pleasure in now introducing him to the Association.

Mr. Walter Gordon Merritt then read his address to the Association. (See Appendix, p. 315)

Motion made, seconded and carried, that the thanks of the Association be extended to Mr. Merritt for his very interesting and instructive address.

THE PRESIDENT: The next on the program is the discussion of the following subject:

*"Should the Right to a Change of Venue Because of Alleged Prejudice of the Judge be Abolished or the Statutes Granting Such Rights be Amended?"*

Mr. Grady is not with us, and the discussion will be started by Mr. John M. Whitehead, of Janesville.

Address read (See Appendix, p. 333)

THE PRESIDENT: The next member on the program for discussion of this subject is Mr. Brossard.

Discussion by Mr. E. E. Brossard without notes. (See Appendix, p. 352)

THE PRESIDENT: Now gentlemen, we have two or three short matters. First, I want to say those who have not already obtained tickets, can obtain them at the hotel from the one in charge of the register.

MEMBER: I move a vote of thanks of this Association be extended to Chief Justice Olson for his very excellent address made last evening.

Motion seconded and carried.

THE PRESIDENT: When the proceedings of this meeting are printed, I suggest that copies thereof be sent to Judge Olson and Mr. Merritt.

MR. MORTON: Mr. President, may I trespass on the time of the Association long enough to ask whether it would not be well for this Association to go further than endorse Judge Olson's address? Should not a Committee be appointed from this Association to investigate and see whether any application can be made by us of what is being done in his laboratory in Chicago?

THE PRESIDENT: I think Judge Olson would say that the matter is a question of education; and that by having the attention of the judges, especially trial judges, called to what is being done, that probably all that could be done at the present time is just what has been suggested in the way of education. I just offer that suggestion, not to head off any motion, or anything of that kind.

JUDGE REID: Mr. President, I see we have a Committee on Criminal Law and Criminology. I think it would do that Committee no harm to give some considerable study to Judge Olson's address.

I want to say just this one word further: I had the privilege of an hour or more with Judge Olson and the President of this Association; and I believe that Judge Olson has begun a work that is of the greatest importance to the criminal law of this country. I think he is on the right track. I see where—in the limited experience I have had as Circuit Judge in dealing with criminals, the idea that he is developing and the investigation he is pursuing, seems to be in the line of where we need some help. And I move that the Committee on Criminal Law and Criminology be requested to

consider the address carefully, and see whether there is anything that can be applied in our situation.

Motion seconded and carried.

THE PRESIDENT: We will now take up the election of officers. You have heard the report of the Committee on Nominations; what will you do with it?

MR. BROSSARD: I move the report of the Committee be adopted, and the Secretary be instructed to cast the ballot for the men named in that report for the respective offices.

Motion seconded and unanimously carried.

THE PRESIDENT: The Secretary has cast the ballot, and the persons so recommended for the several offices are declared elected. The President-elect is Justice Marshall. He is not here, and we will have to conclude the business in his absence.

MR. MAHONEY: Mr. President, I expected there would be a considerable delegation from La Crosse. Some of our bar association telephoned me this morning that the Governor had commandeered the lawyers to go to various places in the city and county where speaking could be held, and address the citizens on the subject of encouraging volunteers for the army; and for that reason that there would not be any one else here. But our Bar Association passed a resolution at its last meeting to extend invitation to the State Bar Association to meet in La Crosse next year; and I now have the pleasure of extending that invitation.

THE PRESIDENT: Last year it was left to the Executive Committee. And I wish to state also that Mr. Thompson, of Racine, asked me to announce that Racine was a candidate for the next meeting.

MR. MAHONEY: In view of the fact there are so few of the members of the Association here, I do not care to urge that those few that are present decide this matter. Probably the system adopted last year would be the proper one. Now there may be various reasons why neither La Crosse nor Racine would be the proper place for the next meeting. And if it is in order, I will move the Executive Committee select the next place of meeting.

Motion seconded and carried.

It was moved that the Association express its appreciation to the Madison bar for the hospitality shown, by a rising vote.

Motion carried by rising vote.

**MR. MORTON:** Mr. President, there are two bills that have been presented by Mr. Parker, one for \$22.00 and one for \$14.75 for expenses in the membership campaign. I move these bills be allowed and paid.

Motion seconded and carried.

**MR. MORRIS:** Here is a resolution also that has been presented and passed on by the Association. I presume the association desires to have me convey this by telegram to the President.

(General expression, Yes.)

Motion to adjourn. Motion carried.



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## APPENDIX

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**BERNARD R. GOGGINS.**

ADDRESS OF B. R. GOGGINS,  
PRESIDENT WISCONSIN STATE BAR ASSOCIATION.

DELIVERED JUNE 27, 1917.

It has been quite the habit in recent years in this country to attack indiscriminately the legal profession, the Courts and particularly the Courts of last resort.

Whatever the fact may be as to other jurisdictions, there certainly has been and is, in Wisconsin, but small foundation upon which to base such wholesale criticisms.

On April 26 and 27, 1912, the Illinois State Bar Association held a most unusual and extraordinary meeting.

In that State there yet prevails the old system of common law pleading and practice, for which a large part of the Bar of that State believed there should be substituted the simplest form of code procedure.

The main feature of said meeting was discussion of procedural reform. All States, including Territorial Bar Associations, were invited to send delegates to participate in this part of the program. Such delegates from twenty-two States took part in the discussion. There was great freedom of criticism covering the evils of technical pleading, over-technical rules of evidence, lack of authority for adverse examination, the general verdict, the jury as judges of both law and fact, delays in selection of juries in criminal cases, lack of intimate working relationship between judge and jury, lack of official state-paid court reporters, the debauching influence of personal injury litigation, successive appellate courts, over-accumulation of untried and undecided cases, limited terms of court, cumbersome and costly appellate procedure, reversals on technical and unsubstantial grounds, political judicial elections, and the like.

That these evils are more or less prevalent in some jurisdictions there can be no doubt, but it is equally certain that Wisconsin is signally free therefrom. Here our pleadings are the simplest, rules of evidence less technically controlling, evils of expert testimony less prevalent than in most jurisdic-

tions, and we have all the benefits and some of the evils of adverse examinations (Secs. 4068 and 4096). With us the general verdict, in practice, is now almost entirely supplanted by the special verdict, and the jury must take the law from the Court in civil and criminal cases alike. The working relation between judge and jury has not reached the point where the judge is permitted to express an opinion on a question of fact, but the Court is permitted to review the evidence in such manner as to enable the jury better to recall and apply it. By reason of our Workmen's Compensation Act the evils of personal injury litigation are passing. We have no intermediate appellate court. Our common law courts (except possibly in Milwaukee) are pretty well up with their work, their terms are practically continuous, and our Supreme Court cleans up its calendar each year. We have official state-paid court reporters with a folio charge for transcripts as low as the lowest where any charge is allowed. Our appellate procedure is less costly and cumbersome than obtains in most jurisdictions. The rule of presumed prejudice from errors no longer here prevails, and to work reversal there must now be real and substantial grounds. Our elections of judges are singularly free from political influence.

We are sometimes too free to take home to ourselves criticisms which may have merit when applied to other jurisdictions, but not to our own.

The success of any true reform in procedure, by Court rule or statute, must depend upon the attitude of the Bar and Bench, and particularly of the Bench. Originally the Field code had about 300 sections and was a grand conception. It grew by legislative enactment to over 3,000 sections. And why? It has often been said that every judge in the State of New York was its bitter enemy; and lawyers skilled in the old practice were only too willing to take advantage of that fact. Of course, legislative enactments followed in an effort to correct such false judicial views and tie down the courts by defining every step in every possible contingency with the result stated.

In the last analysis it all depends upon the viewpoint of those in final authority. We now have that proper viewpoint, that is, a full realization that the true function of the courts and all their machinery is to mete out justice, and to that end

the rules of pleading, practice and evidence should be so simple and understandable as to be readily comprehended and understood, and accordingly respected, by the average litigant, witness, juror and layman.

This does not mean, however, that in this State or elsewhere the ideal has been reached. In the opinion of many there is yet room for improvement.

The one most common to all jurisdictions is the evil of over-technical rules of evidence, or of over-technical application of existing rules of evidence. As stated last year at Chicago by that great lawyer and statesman, Elihu Root, in a meeting of the Judicial Section of the American Bar Association:

"The administration of the law of evidence in this country is more technical and rigid and contrary to the workings of the ordinary plain, honest business man's mind than it is in any country in the world that I know anything about. It is more technical and oppressive to the plain man than it is under the same rules of evidence in Great Britain, in Canada, in Australia, in New Zealand, and in any of the countries outside of the United States that follow the course of the common law. The same rules are applied by us in such a way that the trials of causes are widely different from the trials of causes in all the other common law countries. \* \* \* Why, you will hear, I undertake to say, twenty objections to the admission of evidence in the American court where you hear one in the English court. It is all wrong."

That is a sentiment that cannot be too intensively cultivated by both Bar and Bench. This evil, together with the evil of over-technicality in pleading, has been the chief cause of bringing whatever discredit has been brought upon the administration of law by the courts in this country.

As said by Mr. Root, "You cannot cure it (this evil) by legislation."

Its eradication depends upon the attitude of Bench and Bar and final responsibility rests with the Bench. Whatever of fault in this respect that may still exist in this State is rapidly passing away, recent legislation (Secs. 3072m, 2858m, 2669a, 2836a, 2836b) having given free play to what was really a predetermined judicial policy.

Occasionally it happens that the requirement of a unanimous jury verdict works great hardship and injustice in civil and criminal cases alike. A single juror through perverseness, wilfulness or corruption sometimes causes a mistrial or forces a compromise freeing the guilty or holding the innocent in criminal prosecutions or defending real justice in civil actions. So it has come to pass that verdicts in some states are now authorized by 2/3, 3/4 or 5/6 of the whole number of jurors. In support of the proposition that unanimity should not be required, it is pointed out that unanimity is not required in legislation, in public and private corporate acts, in decisions of our highest courts or any other department of our judicial or political system, and that there is no more reason for requiring unanimity in jury verdicts. In those states wherein the change has been made satisfaction appears to result. Any such change would, in Wisconsin, require a constitutional amendment.

The question of simplifying and cheapening proceedings on appeal without limiting efficiency in method of presentation has also been given and is now in different jurisdictions being given attention and consideration. This includes within its range all that occurs from entry of the trial court's judgment, or order, from which the appeal is taken, to and including submission of brief and argument in the appellate court.

In 1911 the then President of the United States said in one of his messages that

"One great crying need of the United States is the cheapening of the cost of litigation."

The criticism, though certainly not generally applicable to Wisconsin, yet, it is submitted, fairly applies to our Printed Case.

Out of thirty states including territories, from which reports have been had, the Printed Case has been made optional or entirely abolished in twelve as wanting in utility and a useless expenditure of time, energy and money. In one it is abolished except where the question of insufficiency of evidence is raised; in one, except on appeals from the appellate to the Supreme Court, and in one it is abolished so far as the printing of evidence is concerned. In one the trial court determines what shall go into the Printed Case. In one without limit and in another where Case and Brief are together 100 pages

or less, they are printed in one "Paper Book," the argument as an appendix. In five not even Briefs are required to be printed and no costs therefor can be taxed, whether type-written or printed.

In some states the record never reaches the Supreme Court except on its order in case of material dispute between counsel as to its contents.

Our practice in this respect rests with the Supreme Court. In 1909 our legislature enacted that

"The Supreme Court may by rule provide that no party in any action or proceeding before the Supreme Court shall be required to prepare and furnish any Printed Case or other printed abridgment of the record or of the proceedings theretofore had." (Sec. 2407, Par. 2.)

It is submitted that there is no good reason for the Case printing that is now done. It does not assist counsel, and, it is submitted, does not assist the Court. Rarely are the pleadings of any significance in the Supreme Court.

It seems to be pretty well settled by experience that a Supreme Court is not at all hampered in its work because each member thereof may not have before him a copy of the evidence in some form. Any disputes in this respect are few and are better solved by reference to the reporter's transcript in the record than by any reference to Case. A narrative abridgment never fairly represents what the witness in fact says. Few lawyers believe that all the Justices read even a small fraction of the large amount of printed matter placed before them every three weeks. Of necessity reliance must be placed upon the writer of the opinion for a more thorough examination of the record where doubtful questions of fact or law are presented than the other Justices can be expected to make. Experience has demonstrated that about three copies of the reporter's transcript answer every useful purpose.

In some states a transcript and two copies are made by the reporter on order of the trial court, the copies for the attorneys' use, and without charge. In others the copies go up with the record with privilege to withdraw, temporarily, one for use in preparation of briefs.

Under the English Judicature Act there is no Bill of Exceptions, no Printed Case and no Printed Briefs.

Then there are questions of shortening of judicial opinions,

of making the syllabus the law of the case, of elimination of useless writing, reporting and publication of opinions. Pertaining to these there is more or less constitutional and statutory regulation, the constitution of at least one State providing that concurring and dissenting opinions shall not be published.

The volume of our reports in this country has already reached enormous proportions and is increasing rapidly. This nation is yet young in judicial history. What will such volume of reports, according to present practice, be and what will a well-equipped lawyer's or public law library contain 50, 100 or 500 years hence? It is plain at a glance that it must fall to lawyers and judges to devise some effective means for elimination, from the reports, of decisions that are of no practical value as precedents or guides for the future. Chief Justices of twenty-seven states (Wisconsin purposely excluded) expressed opinions on this subject.

Twenty-two of said twenty-seven freely express the opinion that judicial opinions are usually too long; that in opinions generally there is too much argument and quotation from and citation of authorities; that lengthy opinions amount to the law tumbling itself down by its own weight. In one state legislature a bill was recently seriously introduced requiring the Justices to shorten their opinions. This is a matter now much discussed in State Bar Associations in conjunction with the Judges of the appellate courts.

Fourteen of said twenty-seven express the belief that opinions should be entirely eliminated in many cases, some specifying as high a proportion as two-thirds or three-fourths, as serving no useful purpose and as burdensome not only to the courts, but to the profession. A few maintain that opinions should not be eliminated in any case; that dissatisfaction with the court is thereby produced and that it is often claimed that courts thereby avoid writing opinions where, if written, the reasoning would not stand up under the authorities, and that counsel and clients expect and are entitled to know the reasons on which judgments of affirmance as well as of reversal are based. But it is pretty generally conceded that opinions should be written where constitutional or statutory provisions are construed, where new and important questions are decided, and where

new trials are ordered. That otherwise, except in infrequent instances, a *per curiam* decision is enough.

Opinions which simply cite authorities relied on are of no value to the profession and afford little satisfaction to the client and attorney directly interested. Far better is the kind of opinion suggested by Mr. Root. He said:

"I sometimes think that it would be better if the opinions of Judges were a little less devoted to repeating the old, well-understood and well-established rules of law and the authorities to sustain them, and a little more devoted to making plain the reasoning of the decision so that not only the lawyers but their clients would understand why the case was decided for or against them."

The Chief Justice of England, Lord Reading, when recently in this country, is reported as saying to the New York Bar Association:

"I am strongly impressed with the undesirability of the constant reporting of decisions which lay down no new principles but only repeat the application of old principles to new facts. To make one's self familiar with your law, it is necessary to look up not only all the decisions, but all the statutes of your forty-eight states. I wonder how you surmount this mountain of legal knowledge.

"This system of citing corroborating cases has been changed with us. We now strive to get at the merits, to allow no technicalities to prevent the court from perceiving the true facts and arriving at a just decision notwithstanding all the learned counsel that appear before the judge."

In at least fourteen states the syllabus is prepared by the judge writing the opinion, and in five of said fourteen must have the sanction of the court and is the law of the case.

Experience has shown that limitation on publication of decisions and opinions to be effective must be accompanied by rigid prohibition against publication and citation thereof.

Our statute (Sec. 2410) requires

"That the Supreme Court shall give their decisions in all cases in writing" (there is a distinction between decisions and opinions)

and that



"The State printer shall print for the use of the Justices so many of such decisions and opinions, and at such times, as shall be directed by them."

Courts, particularly in the older states, where the law is more thoroughly settled, are, for obvious reasons, gradually extending the number of cases in which no opinions are written. In the last volume (219) of the New York Court of Appeals reports one hundred eighty-six such cases are found.

Then there is the now much debated problem of the proper fundamental principle upon which the Appellate Court should proceed to examination of the record and rendition of judgment in each case.

It is the belief of some that the Appellate Court should be concerned with questions of law only. The majority opinion, however, seems to be that as the Appellate Court is a part and at the head of our judicial system, it is its function and duty as much as that of any other court to see that justice and not injustice is done. Hence it has come to pass that technicality and judicial refinement are now pretty generally at a discount independent of legislative enactment. Our early judicial history shows too narrow application of Section 2829, but before the enactment of Section 2405m, our Court, a leader among courts in this respect, exhibited the human quality and now on authority of said section unequivocally asserts its duty to see that justice does not miscarry. Other legislation already referred to supports the same fundamental idea. Recent legislation (Sec. 3072m) enjoins the same duty on trial courts in support of verdicts rendered therein. But reversal of the old rule of prejudicial error has not entirely, in practice, solved the whole problem, and there has been and is being expended considerable thought, resulting in some attempted legislation as to how the question of prejudicial error shall be dealt with. A number of the states have gone as far as our Section 2405m, but in some of them, there has been a strong disposition to go an important step further.

Some few years ago a special commission on the Laws' Delays in one of the great states of the Union reported to the legislature in favor of an enactment in substance like our said Section 2405m (which the legislature adopted) and in addition in favor of conferring authority on the Appellate Court similar to that exercised by the Appellate Courts of

England to hear testimony not only to determine whether or not error in the admission or rejection of evidence was prejudicial, but on the merits where there has been a lack of evidence, and thereupon to enter such final judgment as such court concludes should on the merits be awarded. This authority the legislature refused, but the effort to secure such legislation has not been abandoned.

It is submitted that the trial court in this state now has authority in any case, if it chooses to exercise it, to receive additional testimony after verdict to determine whether evidence erroneously admitted or rejected, and upon which the rights of the parties must be determined, is in fact prejudicial to the rights of the party complaining at least so far as does not materially infringe the constitutional right of trial by jury.

Suppose an insufficient record of a deed, a defectively certified copy of a foreign judgment, or hearsay or secondary evidence has been received under objection. Why, on motion for a new trial, is not the trial court authorized to receive in evidence the original deed, a duly certified copy of the foreign judgment, the competent instead of the hearsay evidence and the original contract, order, or letter, copy of which was erroneously received? If that thus finally before the Court corresponds with the originally admitted, can there be any doubt that the error was not prejudicial? The Court, in a jury case, can hear evidence on and decide a court question as well after as before the verdict; and there is good reason to believe that the Court in thus determining such question would not always be confined to cases where such additional testimony is without dispute. Can there be any doubt that time and expense would be thereby saved and that justice would be thereby promoted? And why is not the same authority inherent in the Appellate Court to be exercised by it directly or by direction to the lower court to take such additional evidence and decide such question and report such evidence and finding to the Supreme Court as an addition to the record already before it. If further statutory authority is necessary, a very slight amendment to said section 2405m would suffice.

These matters and suggestions are all submitted in the interest of a better general understanding and appreciation of what has already been done and to stimulate study and wise

activity of the Bar of the State in behalf of what should yet be done in improvement of our procedure and jurisprudence.

At said Illinois meeting a representative from one state referred to what he thought was something new and valuable when he said a recent statute in his state permitted suit in equity on a note, thereby permitting a more speedy default judgment. A representative from another state went one better when he stated that on default, in a suit at law on a note, judgment could be taken in his State before the clerk on fifteen days notice. Others pointed out that in their states such judgment could be had before the clerk without notice on proof by affidavit of default. Two of said representatives learned something of value.

Localities and even great states may become so set in their ways of doing things that they cease to inquire if there are better ways of accomplishing the results aimed at. There is nothing better than swapping knowledge and interchange of views. Our states are practically the same in government, institutions, ideals and destiny, and there is no good reason why procedure in all, including United States Courts, should not be substantially the same, so that an attorney in one State would be able to practice in every court in the United States without embarrassment on his knowledge of procedure in his own State. Why not a uniform procedure act as well as a uniform sales or other act. But such uniformity must come by first establishing code uniformity in the states, not by any such method as that now proposed in Congress for uniform procedure in actions at law in United States Courts irrespective of the State practice in which such courts sit—a plan sure to result in a code of hybrid character giving two code systems in each State, one State and one federal. Until a substantially uniform simple code is established in a great majority of the states, no such code can be expected of Congress or of the United States Supreme Court.

Associations are the order of the day in everything, business and professional.

Since the organization of the "Board of Circuit Judges" in this State, as required by statute, (Sec. 113.08) every attorney in this State who is at home in his own circuit is equally at home in every other Circuit Court in the State. Can there be any doubt but what our judicial system in legislative

enactment and practice has been greatly improved by the annual meetings of our Circuit Judges? In such meetings there is comparison and interchange of ideas and selection of what is best and the whole judicial system of the state is not only made more uniform but very much improved.

The lawyer can never well and fully perform the service due from him to the public except as a member of and through and by the team work of bar associations and as a legislator.

The Bar Association of Wisconsin should have in its membership every member of the Bar including every Judge in the State. Certificate of admission to practice ought to be conditional on active membership in the Association. This Association ought to have legal recognition in the laws of this State. Codes of ethics will never become living rules for the conduct of a lawyer's business except through Bar Association channels. His true appreciation of his duty to the public, his client and himself must come in the same way. Its work should be made as useful and practical as possible. Its services should not be limited to the annual meeting and reading of papers on that occasion. Its active, organized interest in affairs should continue throughout the whole year. It should have machinery by which the voice of every member can be heard on any question that may arise between meetings. It should have machinery for conveying to its members valuable information coming from without as well as from within the State. There ought to be County Bar Associations with a working connection between them and State Bar Associations and State Bar Associations ought to have live wire connections with the American Bar Association. There ought to be and are now being held interstate bar association meetings. By these means alone can the great aims and purposes of the profession become a part of the everyday life of the lawyer. Without this education, interchange of thought and unity of action, the best service of the profession to the public can never be rendered.

Under the leadership of its then president, Mr. Root, there was presented to the last meeting of the American Bar Association a plan for the more complete organization of the Bar of the whole country for the purpose, among other things, of promoting the interchange of information between associations (including local associations, for some county and city

associations exceed in membership State Associations in the same state), resulting in amendment of the American Bar Association constitution so as to provide for submission "by referendum to the individual members of the Association questions affecting the substance of the administration of the law which in the opinion of the committee are of immediate practical importance to the whole country;" constituting the President of each State Bar Association, *ex-officio*, a member of the General Council; and the Secretary of the Association *ex-officio*, a member of the Local Council of the American Bar Association.

For a great state like Wisconsin, our membership is very small. We have little more than half the membership of the State of Minnesota, although exceeding it in population. In that State membership was increased by more than 300 last year. Through its Membership Committee it has devised and conducted effective campaigns for increasing and holding membership which it would be well for this Association, and particularly its Membership Committee to study. We should have an association second to none in the country in proportion to population and importance of our State. With such membership and a moderate increase of dues we might readily provide the necessary machinery to do all that is suggested by way of interchange of thought and expression of opinion on the same general plan adopted by the American Bar Association.

But the work of the Bar does not end here. It is of little use that valuable legislation is proposed if not enacted into law. It stands to reason that the great legislator must be a great lawyer. True, legislatures, large or small in numbers, should contain leading representatives of all lines of respectable human endeavor that the best and foremost thought on all things that pertain to the public welfare may be continuously within legislative cognizance. But it is the mature, trained and experienced lawyer with the true sense of ideal statesmanship that must eventually put desired legislation into proper and harmonious form under our constitutions and laws. There is now no real science in our legislation. Our statutes are in almost hopeless confusion. We have a number of provisions for the exercise of eminent domain, municipal bond issues, a perfect jumble of provisions for village and city government,

and the like, with many inconsistent and conflicting provisions on almost all subjects. Even in that country of trained legislators where the assembly was not only a parliament but a full fledged government, and in which there was no such thing as "office" or "opposition" as we understand these terms, it was nevertheless an over-active provision in the Athenian constitution that no new law conflicting with existing law could be passed until the latter was first repealed; and it was there made an offense for any legislator to propose and cause the passage of any law without first procuring the repeal of any conflicting existing law, failing in which he was subject to indictment, prosecution, conviction and punishment.

No such rule will ever be a part of our law. We will never have a Praetor to frame the issues, define the practice and assign cases for trial. We are not likely ever to have a Justinian and a Tribornian to codify our laws. But we must attain desired results in some way consistent with our social organization and government.

Our Revisor of Statutes is doing a noble work in an effort to clarify, simplify and systematize our statutes, but too often his labors go for naught or the worthy results thereof are delayed because of failure and inability of the average legislator to understand the work he has thus done.

It is often and to some extent truly charged that much that is undesirable in substance and form in legislation is chargeable to the lawyer legislator. Reference, however, is not made to the young and immature lawyer with some theory but no practice or experience, or to the older, short-sighted, narrow-minded, selfish practitioner who has neither in his reading, thinking or experience entered into the real spirit of public service in the interest of real progressive jurisprudence and law improvement. On the contrary, reference is made to the mature, up-to-date lawyer of character and of ripe experience who is a member of this Association, conversant with its high aims and purposes, and who is not a politician with overweening political ambitions, but a real, independent progressive in ability and desire to improve the jurisprudence and laws of his state and country.

Lawyers now work more and more in firms and can better afford the sacrifices necessary for such noble service. Too often the lawyers' ambitions or preferences soar to a seat in

the United States House of Representatives or Senate or high judicial position.

Two members with hostile sympathies defeated, on the floor of the present assembly the so-called "Ambulance Chasing Bill" supported by this Association, after it had the approval of the Judiciary Committee of both houses on full hearing without opposition and after it had passed the Senate, not because of any real hostility in the Assembly, but because the members did not understand the measure and because there were lacking in that house a sufficient number of members with the knowledge, purpose and ability necessary to meet the first attack that had been openly made on the bill. With a fair representation of the kind of lawyer legislator described, it is safe to say that the fate of that meritorious bill would have been different. It should never be forgotten that there should be in our legislative halls a representation which not only knows and understands, but which has the ability to make others know and understand the merits of any proposition up for legislative consideration.

What can be closer or of more importance to us and to the people of this State than the welfare of our State? No authority more intimately protects our rights and redresses our wrongs than the State, and why should it not be the most laudable of ambitions of any such lawyer as just described to serve his State and the public welfare by service in its legislature? That sentiment ought to be cultivated by the profession at large and by this association as a body. The time was when more of this class of material was to be found in our legislature than now. In recent years it has been steadily on the decline until now in the assembly it is almost negligible. Usually the best thought of Bar Association fails to receive legislative recognition. This is not so much because of legislative hostility as because of legislative lack of understanding of the real importance and merit of what is there recommended. With a fair representation of the real lawyer, the results would be different. The truth is that as Bar Associations have been increasing in numbers and efficiency, lawyer representation in our State legislative halls has been on the decline.

Since last we met momentous things for this country have happened. This great matchless giant of a nation in man and

material power, but almost wholly unorganized, undisciplined, untrained and unmarshalled, has suddenly been called upon to exert to the utmost the whole of its great strength.

Wrapped in our own isolation from other nations and apparently safe in our personal and political freedom, and in full security and enjoyment of an abundance which a kind Providence so bountifully bestowed upon this land, we had almost forgotten that we had a country, had almost forgotten that protecting us in the enjoyment of our persons, property and liberty there is a government truly our own to which we owe and might some time be called upon to perform a devoted public service.

Suddenly, indeed, was the awakening, but in full measure to the demands now made is the response in personal service and materials. Energetic virile patriotism may have been almost forgotten, but it was not dead. All what is best and most powerful in this nation must and will be used to win in the mighty struggle in which we are now engaged. Our great resources in men and material must be speedily marshalled, our armies quickly trained and equipped to a condition of invincible efficiency.

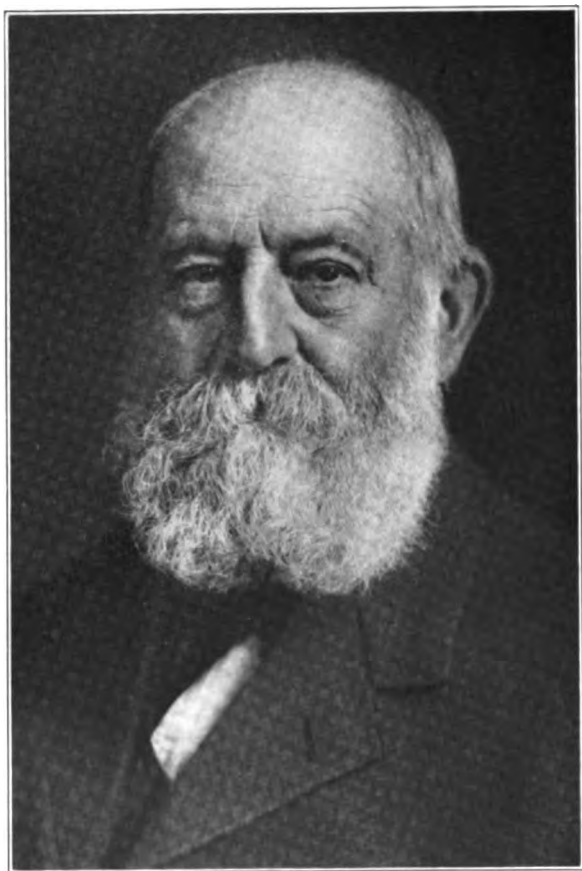
Although the sacrifice of blood and treasure will probably be great before what promises to be a long war is finally won, we should not look at this war as a calamity for us, but rather as a mighty blow in behalf of the world's freedom. No matter what the ultimate cost is to us, its effect is bound to be a lesson in country loyalty, devotion, discipline in personal and public service. For the first time in a half century an intelligent organization of all our citizenship and resources in the country's service has been called for.

So great is our faith in the courage, intelligence and power of this nation that we feel sure that we will be able to meet every public demand upon us in this emergency and at the same time carry on the ordinary affairs of life even better than common. In this sense we should meet all the problems yet before us, correctly solve them, overcome all difficulties, continue to make steady progress in all that makes for the welfare of this State and Nation. We are sure to come out of the struggle stronger, more vigorous and efficient, more united and more homogeneous in race and with a stronger national spirit than when we entered it.



To this call for public service none have responded more generously than members of our profession and none will excel them in personal service and self-sacrifice for our country. Whether it be in the field of battle, in legislative halls or in the ordinary walks of life, the Bar of Wisconsin and the Nation will never be found wanting in generous, patriotic devotion and service to our country and its welfare.





MOSES HOOPER.

ADDRESS BY MOSES HOOPER  
ON THE SUBJECT  
"SOME EARLY LAWYERS AND SOME EARLY  
PRACTICE IN WISCONSIN."

DELIVERED JUNE 27, 1917.

Note—The letter head of Mr. Hooper's firm bears at the top the following: "On January 1, 1896, we adopted the 'Twenty-four Rules' for Reform in Spelling recommended by the Philological Association at Middletown, Conn., 1883; (See Circular No. 8, 1893, U. S. Bureau of Education.)"

Before the adoption of the Code, the standard shingle was "Blank, Attorney and Counselor at Law and Solicitor in Chancery." The Code simplified the shingle so that it reads "Blank, Attorney at Law." The actual practice was also, wisely as it seems to me, simplified in about the same ratio.

Practice under the Code commenced in 1857. Prior to that time what might be proven under certain formal allegations was not a matter of reason and logic, but depended upon arbitrary rules and precedents.

For instance. What might be proven under a statement that the plaintiff casually lost a heifer and the defendant found her had about as definit a relation to the statement of the losing and the finding as the spelling "cough" has relation to "kof." Same with the plea of the general issue. One who should fail of right to prove a fact supposed by him provable under these formal allegations would, no doubt, sympathize heartily with the boy who was, on Monday, kept after school hours for spelling "pneumonia" without a "p" and again on Tuesday, for spelling "neuralgia" with a "p."

I have often thought that the Green Bay lawyer was entitled to sympathy who justified his complaint on the ground that it was in the language of the form book. There was a misprint in the book, and not being aware of that fact, the neophyte following the form, stated that the plaintiff made and delivered his promissory note to the defendant, whereby he promised to pay etc.

His opponent was a prominent lawyer, then of Green Bay, later of the Northwest. He demurred to the complaint and the

yung man justified on the ground that he had strictly followed the form which he produced. He felt grieved that the demurrer was sustained, as well he might.

The Court would now, no doubt, treat the demurrer as Judge Miller treated a demurrer of a very eminent lawyer. A yung man commenced an action in the Federal Court for some New York creditors against their Wisconsin debtor, but did not state in his declaration the non-residence of the plaintiffs. His opponent demurred for want of jurisdiction. On the bringing on of the demurrer, Judge Miller took up the declaration and wrote after the names of the plaintiffs the words "residents of the State of New York." Then turning to the eminent lawyer who represented the defendant, he said, "Proceed with your argument."

The Code was enacted in 1856,—approved October 9. It worked as it seems to me, a great improvement on the old practice. It was embarking, so far as Wisconsin was concerned, on a new sea. It swept away all of the fictions in pleading and put the neophyte and the experienced practitioner on a level as to the practice, so far as legislation could. Its broad and sweeping character made it desirable that the act should be in the hands of every lawyer in as fit shape as practicable. Hence the legislature provided that

"The secretary of state shall, forthwith, after the passage of this act, cause six thousand copies thereof to be printed in a separate pamphlet, as session laws are now printed, and he shall, as soon as said pamphlet is printed, distribute the same as the session laws are now required to be distributed."

This Code seems to have been enacted in a somewhat unfinished form and the legislature provided in the last section of the act that

"The governor shall appoint some competent person, whose duty it shall be to superintend the printing of said pamphlet and revise and correct the proof sheets, and divide the same into proper titles and chapters and sections, with a suitable index, and such person shall be entitled to five dollars per day for his services."

Five Dollars per day for the services of a man capable of dividing this practice act into proper titles and chapters and

sections, and the making thereof a suitable index, calls to my mind the emoluments of the lawyer at this early date.

My first case in Justice's Court found me somewhat diffident respecting my ability to handle it. On that account I employed Mr. George B. Goodwin then of Menasha, later quite a prominent lawyer of Milwaukee, as counsel to assist me. I don't remember what the result of the trial was, but I do remember that I received for services of myself and counsel three dollars. Of this I paid Mr. Goodwin two dollars and felt pleased to have one dollar left. About a week afterwards Mr. Goodwin called on me and showed me a two dollar bill which he said was the one I gave him and that it was counterfeit. I, somehow, somewhere, dug up two dollars and redeemed the counterfeit. So my experience in my first case cost me only one dollar. I have told this story a number of times. When I first told it I knew it was true. But every time I have told it since I am more and more in doubt about the truth of it, for I cannot conceive how or where I got the two dollars to pay back. Dollars were then as big as cart-wheels. I remember that in the first winter of my house-keeping—1858-9—I stacked up five of them against five cords of body hickory wood.

The forecast as to the conclusions of courts and verdicts of juries was about as reliable then as now. During Chief Justice Cassoday's first term as Justice of our Supreme Court he and I were thrown together at the Park Hotel on a Sunday. We gossiped about past, present and possible future. He told me something of his plans as to his course on the bench. He also told me that once he and Joe Sleeper, both then of Janesville, were going home from Madison after arguments on an assignment. They had argued against each other six cases. One said to the other "You mark how you think the cases will go and I'll do the same." Says the other "Agreed". So they marked. On comparing notes they found, to their surprise, that each had marked the same—that each would win three of the six. Further, they agreed as to which three each would win. They were more surprised at the outcome than they were at the agreement of their forecasts. Each won three; but each won the three which he had forecast that he would lose.

Once in Madison at the old Vilas House, during a session of the Supreme Court, a number of lawyers including one of

great ability, afterwards State Chief Justice, sat in the office. Drinks wer suggested. One yung man said, "I'll take lemonade." Whereupon the great lawyer said, with mock solemnity,

"I hold in equal contempt the young man who says 'I'll be goll darned' and the young man who drinks lemonade. I want a young man to talk plain English or swear, and drink whiskey or water."

In the erly days I often met Mr. George B. Goodwin, who was counsel with me in that first case. He often, in argument, exprest very extravagant, and to my mind unreasonable opinions on legal questions. Once, thinking to be a litl smart, I suggested that it woud be wise to hav his opinions collated, edited and bound in calf. Says he, "Agreed. But we'll wait til you die to get the hide for the binding."

An Oshkosh lawyer was in Judge Conger's court at Janesville urging the setting down of a case for a day certain. The judge was reluctant. The lawyer persisted, saying:

"It is very important that I should get this case set down for a day certain and that it should be done this afternoon. I ought to be in my office at Oshkosh now."

Says the Judge:

"The Court takes no issue with you on that point."

There was in those days a class of lawyers which has since, for the most part disappeared from the State so far as I know. The class came on the flood tide of immigration and went West on that tide, like foam on the crest of a wave. The class seemed fit for the then condition, but woud hav no place in Wisconsin today. They inhabited the outer border, the western edge, of civilization. I don't know whence they started, but they kept on the border. They generally defended criminals. Sometimes, but not often, they wer employd by business men. They managd by hook or crook to levy sufficient tribute on business to sustain life. They enjoyd a clear field for play of the imagination and, like Col. Starbottle, did best when least handicapd by facts.

I remember one who was, by some accident, employd to prosecute a thief for stealing a deer skin. He was out of his element. He could only tell the jury what an eloquent harangue he could make, and how he could arouse their sympathies, if he was on the other side.

One other defended a woman charged with stealing in a dry-

goods store. She was taken into custody in the store with the goods on her, hid under her shawl. On her trial for larceny her lawyer read to the jury from the complaint the charge that she did "feloniously take, steal and carry away". He insisted that the learned prosecuting attorney (now a Circuit Judge) knew the essentials of the crime of larceny and had accurately stated them without addition or subtraction, to-wit, "take, steal and carry away"—that the carrying away was an essential element of the crime, and that where there was no carrying away there could be no crime of larceny. He argued that evidently she had "taken" but she had not "carried away" because, as the State's witnesses had testified, she had been arrested on the spot and the goods taken from her. The verdict was not guilty.

One other, acting for a husband in name of the wife replevied a stock of goods seized on execution against the husband. On the trial the husband testified as a witness for the wife, producing documents to show her title. On cross-examination by a young lawyer, he, the husband, admitted that one of the documents, an affidavit made by him, was false and that two other documents, an inventory and an affidavit, had been forged by him by alteration: also that all this had been done by advice of his attorney who was then sitting at the table trying the case.

At this point George B. Smith, then the great jury lawyer of Madison, called the young man aside and told him that he was over-trying his case and creating sympathy on the part of the jury for his opponent. Acting on this suggestion, the young man ceased his cross-examination. It was almost beyond my belief that the attorney whose rascality was so plainly shown could face the jury. But he made the argument of his life. Not handicapped by facts, he gave loose rein to imagination and sought sympathy of twelve honest yeomen in behalf of a poor woman in contention with New York Shylocks—Shylocks so void of every honorable sentiment as to attack this poor but honest woman.

At an early day there was in Oshkosh a firm of Wheeler & Blank. Wheeler was a keen, logical lawyer but very frail in body. His partner, Blank, was a man of diaphragm and voice and presence. When one walked with Wheeler, he felt like taking and carrying his valise as he would that of a



woman. When one walkt with Blank, he thought of the comforts of solitude. A farmer had what seemed to him and to Blank a small, unimportant, case in the court of a justice. He went to the office of Wheeler & Blank, and consulted and retained Blank. Later Wheeler looked into the case and thought that quite important rights might be concluded by the Justice's judgment. So he took charge. At the hour of trial, when the Justice calld the case, the farmer, seeing that Blank wasn't present, askt a litl delay. Wheeler, hearing this, said that he was there to represent that side. The farmer was indignant. He said he supposd he had hired a man to represent him and didn't like to be put off with a boy.

Later Wheeler went on the bench. Blank thus became sole proprietor of a very considerabl law practice. Bashford's term as Governor had expired and he was on his oars. So he and Blank formed a partnership as Blank & Bashford. Whittemore, a Vermonter, was then practicing in Oshkosh. He spoke of the new firm as the Kangaroo firm. Askt why the name, he said "the strength is all in the hind legs."

Blank's pet frase was "damnified by his own laches." It was hard luck if he coudn't bring that in somewhere along the line. Judge Gary's brother, then the Clerk of the Court, was fond of putting this conundrum, "Why is Blank like necessity?"

Judge Burnell, when a neophyte, had a case in Justice's Court wherein he expected his opponent to rely upon the recital of a fact in an official certificate. The Supreme Court had decided that this recital in the certificate was not proof of the fact. On the trial his opponent relied upon the recital in the certificate as the Judge expected. The certificate was signed by James H. Jones, County Treasurer. Jones was a party wheel hors, who attended every republican county convention with proxies of the delegates of his town in his pocket. The Judge moved a non-suit and triumphantly read the decision of the Supreme Court. While emfatically clinching his argument he noticed that his opponent sat quiet and calm, not at all nervous, apparently half dreaming. When the Judge finisht his argument his opponent arose and said to the Justice,

"This sprig of the law from Oshkosh talks very glibly about what certificates prove and what they don't prove.

Let me read this certificate to you (reads it). It is signed by James H. Jones. Evidently this young man doesn't know Jimmie Jones as you and I know him or he wouldn't talk so glibly about this certificate. You and I know that Jimmie Jones wouldn't sign his name to a certificate that wasn't true any quicker than he cut off his right hand. The Supreme Court wasn't talking about a certificate signed by Jimmie Jones. That's all I hav to say."

The Justice said "Judgment for the plaintiff."

But there wer giants in those days.

G. W. Washburn was an Oshkosh lawyer in an erly day. At that time ten cents was the rate of postage on an ordinary seald letter, paid at the place of delivery and not at the place of mailing. He told me that he had frequently let a letter lay in the postoffice several days on account that he didn't hav the ten cents to pay the postage.

In 1864 he became Judge of the then tenth circuit. On accession to the bench, he received the ten usual complimentary railroad passes. These he returned as undesirabl not having been earnd. The passes wer sent to him agen with the suggestion that the acceptance thereof carried no obligation. Agen he returned the passes saying that he shoud feel more comfortabl in considering close questions in railroad cases if he had no passes in his pocket.

There was a pair of lawyers at the Winnebago County Bar with whom I came in almost daily contact. They wer Charles W. (Charlie) Felker and Gabriel (honest old Gabe) Bouck. They had for each other the high regard that grows out of honest combat.

Bouck was a man of large fortune, in part inherited and in part ernd. But the large fortune didn't submerge the hed or hart of the lawyer. Felker ernd and as the hed of a large family, disburst a large incum.

Bouck endorst Felker's note. Note protested. Next morn-ing Bouck enters Felker's office with notice of protest pinchd between his thumb and fore finger and this dialog followd:

"Charlie you're getting along in years and ought to change your business methods."

"Yes, Gabe, that's so. I've just been thinking about that. Let's begin now. You make a note and I'll en-

dorse it and take up the old one and you can see that the new one isn't protested."

Felker was, during his practice, contrary to the general supposition, a diligent student. Bouck used to say that when thuroly interested in a case, he, Felker, studied himself blind. But he never mist the point. You wil go far to find a redier or more abl all-a-round lawyer in a ruf and tumbl fight. He was like the proverbial cat—no matter how you threw him into the air he always came down on his feet. He didn't confine his reading to his cases, but took in the whole field of the law and as well the field of science and literature.

Bouck, a bachelor, was urging in the Supreme Court in a breach of promise case, (*Kellett vs. Robie*, 99 Wis., 303) wherein he represented the plaintiff, the damages to his client growing out of the loss of the fine sentimental fazes of married life. Answering him, Felker said,

"May it please the Court; As I sat here listening to my learned friend Col. Bouck, it seems to me that he embodies in his own proper person the learning of Bacon, the genius of Shakespeare, the philosophy of Balzac and the sentimentality of Sir Walter Scott."

Once Felker's landlord sent his son to Felker's office with a receipt for rent. Felker paid the rent, but said to the yung man "Go back and give this receipt to your father, and then if I ever want it I shall know where to find it."

For a long time Mr. Bouck took upon himself the burden of carrying on the contentions of poor widows and orfans, especially such contentions agenst railroad companies. When such claims wer prest by Mr. Bouck the poverty of the claimant was not a factor in the case. Bouck put in his money as well as his time. But he prest such claims only upon the facts and not for extravagant or unconscionabl damages. His handling of such claims was so fair that he ordinarily secured satisfaction without action. Mr. John T. Fish of the C., M. & St. P., told me that when a claim against his road came to Mr. Bouck, legal action was very rarely taken. He said that on notice of the claim from Mr. Bouck, he was requested to state fairly the extent of the injury and his opinion as to the actual damages, and that ordinarily the claim was allowd at once at the amount stated. Bouck's office was for years, to

the great advantage of the claimants, a bureau of adjustment without suit of such claims arising in Oshkosh and vicinity.

While Mr. Bouck was a member of Congress railroad passes for such officials were practically matters of course. But he, like Judge Washburn, declined them.

In 1858-9 he was Attorney General of this State elected by the Democratic Party. He frequently had occasion to say, "I am Attorney General of the State of Wisconsin, not of the Democratic Party."

He was a Colonel in the War of the Rebellion and his war record was honorable.

Earl P. Finch was co-temporary with Bouck and Felker and a fair match for either of them. He knew men and what moves them and he could touch the secret springs. He also had a strong rugged sense of fairness and justice. I had occasion at one time, as Assistant Federal District Attorney, to proceed before Finch, as Federal Court Commissioner, against divers parties on account of the violation of the Internal Revenue Law. This law was then stigmatized by democrats as a republican inquisitorial measure. Finch was a democrat. Defendants hoped for favor on account of his well known partisan feeling. But they didn't know the man. His uniform statement at conclusion of the arguments was "Damn the law; but you are guilty."

Probably Ephraim Mariner accumulated a larger fortune than any other Wisconsin lawyer. Thoroughly interested and informed, and with decided views, respecting economic and social questions he sought no political preferment. He chose to be what then was and still is, much needed, a fearless, determined, active, untrammelled citizen.

It has seemed to me that he was the keenest, most logical and best informed lawyer whom I have ever had the good fortune to associate with.

He had in unusual degree the faculty of co-ordination. It used to be said of Agassiz that he could, from a fish bone, rebuild the fish. Mr. Mariner could, from one important incident in a business transaction, reconstruct the entire transaction. He knew the almost necessary relation of each part to each other part. This ability gave him great advantage in unraveling complicated affairs.

He not only stood by the letter, but as well by the intent

and meaning, of his promises. He was generous and true. He was a staunch friend and many less fortunate lawyers knew the value of his friendship.

The biographical notice says, "Edward S. Bragg, soldier." That is, no doubt, what he appears to the people generally to have been. He made a large, bright mark as commander of the Iron Brigade.

He was also a statesman and a constructive legislator, and to a considerable extent, a politician. He was, as a politician, ardent and partisan. But his associates never felt sure that they could rely upon him to go with the gang, or play party politics.

To us who knew him better, he was Ed. Bragg, the lawyer.

In drafting legal papers, and in oral argument as well, he was a master of succinctness, exactness and brevity of expression. He said more in a few words than any other lawyer I have ever known. This is the more remarkable because there came into use, when he was in the full tide of practice, the stenographer and the typewriter. The lawyer used to have pigeonholes in which he filed papers, and he went to court with a little green bag in which he carried the files in the case on trial. After the advent of the stenographer and the typewriter, legal documents became much more diffuse. It had been laborious to write with the pen; but now it became easy to talk across the table to a stenographer. The pigeonhole gave place to the drawer; and the green bag gave place to the valise and trunk in which, under the present practice, lawyers carry their papers from their offices to the trial table. But Gen. Bragg never needed the drawer for papers prepared by him. He could get along with the pigeonhole. He never needed the valise or trunk. He could get along with the green bag.

Emerson said there should be no emphasis to indicate important words,—that all words should be important. Mr. Bragg's writings met this strenuous rule. I think I learned more of method from Mr. Bragg and more of law from Mr. Mariner than from any other practitioners.

I have not known of any legal contention wherein there was a greater array of ability and learning than in the contest for the governorship of Wisconsin, between Bashford and Barstow, in 1856.

Barstow was in possession of the office with certificate of election. Bashford claimed to have been elected, and that Barstow had been counted in by fraud. For Barstow were Jonathon E. Arnold, Harlow S. Orton and Mat H. Carpenter. For Bashford were Alex W. Randall, James H. Knowlton, Edward G. Ryan and Tim O. Howe.

Arnold closed the argument for Barstow. He lived and died the able, consistent and gentlemanly lawyer. So did Knowlton. Orton became a State Justice and is known by his opinions. Randall became Governor. Ryan became State Chief Justice. Carpenter became Federal Senator and Howe became Federal Senator and Postmaster General.

All except Ryan took sides in this great fight as their party affiliations dictated. I make no suggestion that any one of these great lawyers did not follow the lead of his conscience. But Ryan, evidently impressed by the justice of Bashford's cause, laid aside his party prejudices and swung his mighty battle ax with Bashford's champions. Orton said of him, at one point wherein they agreed,

"I am proud that as a politician as well as a lawyer, the gentleman can be so independent of party and so sound in his views." (p. 699).

The questions raised and discussed were broad, general, fundamental principles governing organized society. Most of the gentlemen enriched their arguments by reference to important decisions, to constitutional law writings, to great civilians. Messrs. Carpenter, Ryan and Arnold made most learned and eloquent arguments fortified with citations to eminent judicial decisions, and the reasoning of learned treatises on problems of government and sociology. These arguments were exhaustive. Of them, Chief Justice Winslow said (Story of a Great Court, 103),

"That the argument was a brilliant one goes without saying; even the meagre report of it which has been preserved demonstrates this fact. It took place at a time when oratory was still heard in courtrooms, when the profession was not yet overwhelmed with whole libraries of precedents, and when argument based upon general principles was still possible. Trope and simile, metaphor and classic allusion, apt quotations and biting satire abounded in the speeches made by men who were

at that time the intellectual giants of the bar of the state."

But the argument which interested me the most was made by Mr. Howe. He prefaced it with these suggestions. He

"came here supposing that the determination of this motion rested upon two or three simple and clear provisions of the constitution of this State and of the laws framed under that constitution. He did not suppose it was to involve him in an elaborate review of the writers upon constitutional history or of the essayist upon the theory of government. And after a careful consideration of the arguments urged in support of the motion, he remained of the same opinion as at first—that this motion must be considered in the light of the constitution and the laws of our own state \* \* \* and if the authority to hear and determine the information in this case be not found in the constitution and laws of this state, he would not ask the Court to look elsewhere for it." (4 Wis. 625).

He stuck to his text. His argument, so far as preserved, refers to substantially no authority outside of the Wisconsin Constitution and Statutes, either to sustain his own position or to weaken that of his opponent. It seems most simple and convincing.

Soon after the Bashford-Barstow fight, Howe showed his fiber. Attempt to enforce the Fugitive Slave Law in this State aroused intense antagonism, and a joint resolution declaring the right and duty of resistance to the Federal government was adopted by the Senate and Assembly (Laws of 1859, p. 247-8). At next election of a Federal Senator, in 1859, Howe was a Republican candidate. He was dissatisfied with the position of the State respecting the right of the Federal Supreme Court to review the decision of the State Supreme Court on the question of the constitutionality of this law, and also with the adoption of the resolution justifying nullification. He looked upon the claim of Wisconsin as a dangerous heresy. His friends assured him that they could secure his election as Senator if he would simply hold his peace. He declined, saying that he could not accept an election gained by silence. He openly challenged the decision of our State Supreme Court and denounced this joint resolution. He was defeated. Later, in 1861, the nullification pendulum had swung the other way and he was chosen Federal Senator.

On the death of Chief Justice Salmon P. Chase, he was offered a Federal Supreme Court Justiceship which he declined.

The result of the Bashford-Barstow contention was an adjudication that the Court could go behind the returns; and that Bashford was elected tho Barstow held the certificate of the canvassers.

Later, in the great contention between Tilden and Hayes respecting the election to the presidency in 1876, there was a larger array of lawyers in number drawn from the whole United States. But I doubt if they were of greater learning or ability. Herein Mr. Carpenter, following Mr. Ryan's example in the Bashford-Barstow case, disregarded his party affiliation and took sides with his conscience and judgment. He was for Tilden; and claimed that the returns were impeachable for fraud or mistake. But eight of the fifteen commissioners stood solidly by their party and, on the returns, awarded the office to Hayes.

It came about at this time that the array of lawyers upon any great constitutional contention was not complete without Mr. Carpenter. He was the foremost advocate in the celebrated *McArdle* case (74 U. S. 506), wherein was adjudged the constitutionality of one of the partisan reconstruction acts, supposed at that time (1868) to be of great political significance.

He was, by learned contemporaries, called the greatest constitutional lawyer in the United States.

He seems to have been born a lawyer. It is said of him that at the age of sixteen he tried a case in Justice's Court against his grandfather and won. For this service he received his first fee, a gold ring.

I have heard it said of him that on his death bed he had a sinking spell. Rallying from this he said to his physician, who was standing by his bed-side "Is this death?" The physician answered "No. It is not death but coma". Whereupon Mr. Carpenter replied "I would not be so ungrammatical as to come to a full stop when it was only a comma."

After he died Mrs. Carpenter went to his bank in Washington and asked respecting his balance. She was told that he had none. Disappointed, she turned away sad indeed. But the banker called her back and said "Mrs. Carpenter, you have a balance of something over six thousand dollars."



## JUDGE OLSON'S ADDRESS.

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### DISEASE AND CRIME—AN ANALOGY.

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#### THE PROGRESS THAT HAS BEEN MADE AND WHAT THE FUTURE PROMISES AS SHOWN BY THE PSYCHOPATHIC LABORATORY.

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In May, 1914, the Mayor of the City of Chicago and the Aldermen of the City, at the suggestion of the Judges of the Municipal Court, established a psychopathic laboratory in connection with the special criminal branch courts. Dr. William J. Hickson was chosen as director of this laboratory. He had specialized in neurology and psychiatry, and spent two and one-half years in the clinics of Kraepelin in Munich, Ziehen in Berlin and Bleuler in Zurich, and had been a member of Bleuler's staff for nearly a year and also on the psychiatric and neurological staff of the clinic in Berlin. A man of this particular training was insisted upon because of the advanced work of these European clinics, and especially since Dr. Bleuler has developed the psychological approach to mental disease to a very high state. Associated with the Doctor in the laboratory is his wife, Marie Hickson, and three young women who have been taught by the Doctor to give the Binet-Simon Scale and other tests, and from time to time volunteer workers who are anxious to perfect themselves in this field.

The laboratory has been in operation now for nearly four years and has attempted to make a systematic study and classification of the cases referred to it by the different judges, in order that effective measures of prevention and intelligent individual treatment might be invoked. The problems of crime and mental deficiency are pressing for solution upon the legal and the medical professions. The criminal law is enforced in the courts and, therefore, it is an ideal place for a study of the relation of disease and crime. The city has a police force numbering five thousand men. These officers are *ex officio* officers of the Court. They are maintained by the city at an expenditure of more than six million dollars per



JUDGE HARRY OLSON.



year. In addition to their other duties they act as agents to the laboratory in bringing into the courts those who are charged with vagrancy and crime, and who do not conform to normal standards.

The Municipal Courts of Chicago are highly specialized. All those charged with violating city ordinances and the state laws, between 17 and 21 years, are brought to the Boys Court. All women above 18 years of age, charged with violation of city and state laws relating to prostitution, are brought to a special court known as the Morals Court. All suits for non-support, bastardy, desertion of women and children, etc., are brought into the Court of Domestic Relations. The ordinary criminal cases against adults are brought in thirteen different criminal branches about the city. This specialization brings together to one place the father and mother, son and daughter, who are charged with offenses, and the centralization enables quick reference to the adjacent psychopathic laboratory of any case under suspicion.

The City of Chicago now has a population of over two and one-half million of people, largely cosmopolitan, and it can be readily seen that the psychopathic laboratory has abundant material. No medical school in the land could afford nor has any such wealth of material for the study of insanity and mental deficiency as has the psychopathic laboratory in the municipal Court. The volume of business is so great that the laboratory can only sample the cases from time to time as they pass through the courts.

It is the purpose of this paper to call attention to some of the facts as disclosed in the laboratory showing the relationship between disease and crime. Nearly five thousand individuals have passed through the laboratory since its establishment. As this is probably the largest number of those charged with crime who have been diagnosed by a trained psychopathologist, it should be of some importance in the study of crime, especially to the legal and medical professions.

Prior to my connection with the Municipal Court, eleven years ago, I had been for a period of ten years a prosecutor in the criminal courts of Cook County, and my attention was constantly called to the large number of the criminal classes who were defective to the extent that their defect seemed to be the cause of their criminality. Especially was this so of

many offenders of adolescent age. I noticed also that there was uniformity in the number, character and condition of crime; that the aggregate number of arrests for felonies per year appeared to be uniform proportionate to the population. Upon further inquiry I notice that this uniformity exists in all countries and all degrees of civilization. Another fact that impressed me is that only about two per cent. of the population are ever charged with crime. It was apparent, too, on investigation, that there was uniformity in the character of crimes; that the average age of those arrested and convicted was between 18 and 24 years. The static character of criminal statistics, the fact that the criminal age occurs early when responsibilities come, and that only about two per cent. of the population are ever charged with crime, even in those early days, impressed me as significant facts pointing to something inherently defective in the race, as responsible for the majority of fundamental crimes. Observing the results of the investigation and research of alienists and psychopathologists, especially of those connected with criminal courts, I am convinced that such is the fact. Besides the factors mentioned above, one must be impressed by the little impression made upon the static existence of crime by our efforts at punishment and prevention. Beginning in England when 165 crimes were punishable by death without making any influence upon the volume of crime, we can trace the efforts to suppress crime by maiming, mutilating and branding, then by the addition of humiliation as when the unfortunates were ducked in the pond in the public square and pillories and whipping posts were utilized. We even find burning at the stake for some crimes. Then followed solitary confinement, the ball and chain. As a reaction to these conditions, the idea of reformation was introduced into penology, then parole and probation, and yet in spite of all these efforts extending over long years, the percentage of crime and criminals, like the Mississippi River, flows on.

The taxpayer when he notes that the State of New York spends one-quarter of its total expenditure in the care of the insane and that it has tens of thousands who need institutional care who are not receiving it; that a State like Illinois pays for its charitable institutions about thirty per cent. of its total expenditures, of which the mental, nervous and insane

group make up about twenty-two per cent.; that cities like Chicago expend about ten million dollars annually upon its criminal courts and police department, has come to feel that he is not getting the equivalent in results for such outlays. The record of assassinations and attempts upon the lives of others by insane, dementia praecox and feeble-minded individuals is not a credit to our methods of handling this class. The courts have been censuring and punishing them in order to set an example that would deter others. Our laws, except as to outspoken insanity, are framed on the theory that all people are normal and hence punishments will deter. Certainly, in view of this situation, it is important that we give intensive study to the criminal in order that we may know who his ancestors were, who he is, what he does and why he does it. Such inquiries are fundamental before we can make further progress in the suppression of crime.

"Know thyself" was represented more than two thousand years ago to be the highest attainment for which human beings could strive. Dr. Pinell in Paris more than one hundred years ago called attention to the great number of volumes adorning the shelves of libraries in comparison with the meagre record of exact observations conducted upon individuals. The intensive study of the individual who infracts laws and especially the grosser ones, such as burglary, robbery, larceny, criminal assaults upon women and homicides, will be the most important factor of success in our efforts to suppress crime.

The courts have attempted to solve the crime problem and the courts have not been capable of doing so. To begin with, the American courts, always ready to receive with respect the decisions of the courts of England, have been unduly influenced by their decisions in insanity cases, as for example the rulings in the McNaughton case. The Lord Chancellor of England in the House of Lords on so late a day as 1862, declared that:

"The introduction of medical opinions and medical theories into this subject (of insanity) has proceeded upon the vicious principle of considering insanity as a disease."

Fortunately, we have some exceptions in this country, notably the decision of Judge Somerville in *Parsons vs.*

*State*, 2 Southern Rep. 854, an Alabama case. Though this decision was written more than thirty years ago, it is abreast of modern science today and is regarded as a leading case in the United States. The court in that case held:

"The inquiries to be submitted to the jury then, in every criminal trial where the defense of insanity is interposed, are these: First, Was the defendant at the time of the commission of the alleged crime, as a matter of fact, afflicted with a disease of the mind, so as to be either idiotic, or otherwise insane? Second, If such be the case, did he know right from wrong, as applied to the particular act in question? If he did not have such knowledge, he is not legally responsible. Third, If he did have such knowledge, he may nevertheless not be legally responsible if the two following conditions concur: (1) If, by reason of the duress of such mental disease, he had so far lost the power to choose between the right and wrong, and to avoid doing the act in question, as that his free agency was at the time destroyed; (2) and if, at the same time, the alleged crime was so connected with such mental disease, in the relation of cause and effect, as to have been the product of it solely."

Many of our courts still adhere to the right and wrong tests, despite such exceptions as noted in paragraph Third above. The statutes of most states on the subject of mental responsibility for crime are the same as they were fifty years ago. These were based on the medical opinion of that day. There has been little progress in the law in the last fifty years, but medical science has advanced with rapidity. Even so in the specialty of psychopathology there has been slow progress in this country and England compared to that on the continent of Europe. Very little instruction has been imparted in medical schools in psychology or in psychiatry, owing to the fact that the financial rewards in this field were not so inviting nor the prospects of successful achievement so encouraging as in internal medicine or surgery, and the students did not demand the courses.

The courts are beginning to rely more and more upon well trained psychopathologists, and the day of the expert on insanity whose testimony was for sale is fast passing. The institution of psychopathic laboratories in connection with crim-

inal courts indicates that both the legal and medical professions are beginning to appreciate that a large number of chronic offenders are not always benefitted by the legal punishment inflicted nor is society adequately protected by such punishments. We are slowly learning that many of the criminally insane and feeble-minded upon whom legal punishment has been inflicted in our courts were not fully responsible, and their punishment did not work their reformation. Professor Hans Gros who died not long ago, one of the foremost criminologists of the world and director of the criminalistic institute at the University of Gratz, Austria, said in his wonderful book "The Handbook for Examining Magistrates" that it would be much better that judges would make mistakes in sending no end of normals to the psychopathologist for examination rather than make the mistake of passing over one who was not normal, but even if they should do this they could never wipe out the terrible stain which rests upon them for hanging and incarcerating all these years irresponsible individuals.

The re-discovery of Mendel's Law of Heredity has caused the archaeologists and the historian to revise his notions of the races of man, and it has also caused the alienist and psychologist to look toward heredity instead of environment as a prime factor in juvenile delinquency. After the re-discovery of Mendel's Law the development of psychopathology in the great European clinics of Kraepelin, Ziehen and Bleuler has contributed most to an understanding of the criminal. Bleuler has developed the psychological approach to mental disease to a very high state. This method of approach to mental disease is important in a great laboratory because of the rapidity with which the diagnosis can be made. Speaking of the diagnosis of Dementia Praecox, Dr. Hickson said in a paper read before a meeting of alienists and neurologists:

"From the clinical side, in a large percentage of these cases, there is nothing very definite on which to establish a diagnosis; while at the same time the disease is of the utmost potentiality in the thinking and doing of the victim; this is sometimes called predementia or latent dementia praecox, which, as a matter of fact, is not latent at all except in the physical sense. The psychological side may be quite well advanced and highly potential



criminally, while yet there are practically no definite physical or clinical signs; in fact, as a clinical entity dementia praecox in its present advanced development can be hardly said to exist in a large proportion of cases.

Many such physical or clinical signs should not be relied upon to make the diagnosis; and it is well known how well cases of dementia praecox paranoides can dissimulate on occasion. By the psychological method we take the diagnosis to the case in the same way that we take the tests these days to the feeble-minded, and not sit by and have to await developments as is the case in many instances diagnosed by the ordinary clinical methods, and these tests are to the dementia praecox in the reliableness and applicability what the Binet-Simon tests are to the feeble-minded. These psychological signs and symptoms are as clear and definite to the properly trained man as they are unknown or unappreciated by those unfamiliar with the method."

The tests used in the laboratory are the following:

#### BINET-SIMON INTELLIGENCE SCALE.

This scale was the outcome of a long and painstaking study by Dr. Binet, who was a physician and psychologist, and Dr. Simon, a physician. The tests were most carefully selected, many of them being well tried out tests of other experimenters. It was used by them primarily as a diagnostic test for feeble-mindedness in the elementary schools. The psychopathic laboratory not only uses it for this purpose, but has also discovered it has many possibilities along the lines of psychopathology. For instance, we discovered the value of the visual memory for this purpose when given with certain modifications, such as a series of exposures followed by other visual memories, the latter bringing out certain symptoms of confabulation, etc. We also discovered the fact and find it very helpful as a means of early diagnosis in cases of Paresis and Dementia Praecox, that in the majority of these cases we find a certain amount of scattering, each type being quite characteristic.

The test, however, should only be used by a trained person and under the supervision of a psychopathologist for it in

itself does not give any diagnosis; it is like the physician's thermometer. pulse record, etc., in the hands of the nurse; it requires a physician, with the facts gained from these sources, to make the diagnosis.

#### ROSSOLIMO TEST.

This test is an elaboration of the Binet-Simon Test, in which each of the mental faculties tested are subjected to very many more tests and the results marked in percentages instead of by years. This test was worked out by Rossolimo, a Russian neurologist from Petrograd, who did the work under the direction of Professor Sommer at the psychiatric clinic in Giessen, Germany. In its modified form it takes about three and a half hours to give it, and, of course, gives a great inventory of a person's mental stock in trade. It also has great psychopathic possibilities. It is called the psychological profile method because the score made in each test is plotted on a percentage scale and the different points joined together by a line.

#### THE GRADUATED ASSOCIATION TEST OR ASSOCIATION SCALE.

This is an intelligence and psychopathic test worked out with great pains, applied for the first time in a laboratory, in which carefully selected stimulus words have been picked out corresponding to the various semesters in the elementary schools and corresponding to the common thought constellations of these various grades. The groups of words not only in this way test out the various intelligence levels, but are also said to bring out psychopathic complexes, etc. It also contains double meaning words and other set words.

#### ANALYSIS-SYNTHESIS SERIES.

Since reasoning is a matter of analysis and synthesis, these tests were devised specifically along these lines, and consist of a series of graded tests of simple similarities, double similarities, dissimilarities, simple syllogisms, etc. All of these tests, to have any dependable value of exactitude, demand the most careful kind of technique; the more sensitive the instrument, the more such technique is necessary. The longer

we are in this field, and the greater our observation, the more we are convinced of the necessity that anyone giving these tests should be standardized, and they should only be interpreted by a man who is trained both in psychology and psychiatry.

### WORLD TEST.

A certain percentage of more or less outspoken cases of insanity and feeble-mindedness are obvious to the laymen. a large percentage is more or less obvious to the police judge, but a still larger number must be reserved for the identification of the expert psychopathologist. The World Test is the most adamant of them all because it consists of the evolution of the reaction of the individual to his environment, and it involves a checking up of his capability of adjustment, his failure and success at home, in school, at work. The World Test is also a sure means of testing the capability of the expert as events in the life career of the individual will either disprove or affirm the diagnosis.

A record is kept in the laboratory of such data as will supplement findings of the laboratory. The laboratory has now been in existence for a period of nearly four years. Nearly five thousand individuals charged with various offenses have passed through it. The results show that a large per cent. of crime is committed by mental defects. The homicides, for example, will be reduced by a rigid enforcement of the law, but more especially by the isolation in institutions of security of paranoics and those suffering from Dementia Praecox, epilepsy and Pdropfhebephrenia, and by creating a protective environment for the feeble-minded. A considerable percentage of homicides will be reduced when liquor is taken away from psychopaths who commit murder under its influence. Burglaries, robberies, larcenies and criminal assaults upon women are the work principally of mental defectives. What then is the promise of the future? The feeble-minded situation as a whole is a hopeless one. Our present method of handling this situation are isolation and sterilization, since we realize more and more daily that the vast majority of these cases are of a hereditary nature. A small per cent. are due to injuries at birth or to the brain in early life. Such

cases are not so dangerous because the defect is not hereditary. The feeble-minded person who is not afflicted with serious complications, such as *Dementia Praecox*, is usually a tractable individual. He can be cared for in homes where the environment is satisfactory, especially away from large cities. The defective delinquent who gets into the courts and who is charged with the more serious offenses, is usually mentally arrested, but has associated with the mental arrest some complication especially *Dementia Praecox*. Those mentally arrested at about ten years of age, though chronologically older, usually commit the more serious crimes. A farm colony affords the only solution for this type. So cared for they could be utilized under supervision to produce their own food, clothes, etc., and thereby lift the burden from the taxpayers, and carry their own expense. These cases are generally incurable. If left in society they become the habitual criminals, who go in and out of our penitentiaries.

The findings of the laboratory are full of significance for neurology, psychiatry, psychology, ethics and especially for criminology. The objective view of crime has heretofore prevailed in the United States; the laboratory emphasizes the personal side of the criminal and the subjective side of the crime. The slight advance made in the battle for the suppression of crime has been due to the fact that we have relied upon legislation prescribing penalties instead of doing what we should long ago have attempted. We have laid too great importance on the environmental factors and paid too little attention to the problem of heredity.

Where heredity plays a part as it does with the feeble-minded, insanities and psychopathic, the laws of eugenics must be invoked. Bad heredity creates a bad environment immediately, but it takes bad environment ages to create a bad heredity. After a generation or two of combatting crime, insanity and feeble-mindedness along these new lines, we shall find that these defective stocks will gradually disappear.

The war has called attention to the importance of this subject. The draft has called to the colors the young men from 21 to 31 years of age. It thus has brought together a percentage of defective youths. An occasional homicide (as for example that of the Captain at Camp Funston, Kansas, and that of a Jackie by another from Great Lakes recently) has

drawn the attention of Army and Navy officials to the situation, and the government has called trained physicians to its aid to weed out the mentally unfit. Germany's advance in psychopathology is partly due to the necessity of weeding out of the army mental incompetents and of preventing the slackers from pretending mental incompetence, when such was not the case, in order to avoid army liability. Our Federal government heretofore has paid little attention to this subject. A bill has been introduced into Congress—Senate No. 4990 and House No. 8820—providing for the scientific study of unfortunates, especially the criminal class. This bill carried a small budget of only about eight thousand dollars. The inadequacy of this budget can be seen, when it is considered that the burden of crime and mental disease in this country runs annually into many millions of dollars, and that defectives have been coming in from Europe with immigration.

One great benefit of universal military service will be the early identification of the mentally arrested as they are gathered in cantonments.

The identification of the mentally defective should be begun in the public schools. The identification of this type early in life will be of great benefit to the individual and the state. The teachers of the subnormal schools of our cities know the situation.

The defectives are with them under their control until they grow too old to go to school, when they are turned loose upon the community to become the prey of others and finally a menace to society. Their early identification and transference from the school, in the case of the feeble-minded, to a protective home environment, or in the case of the defective delinquent, the praecox, to a farm colony, will deflect from criminal ways thousands of the youth who would otherwise fill the criminal courts, jails, reformatories and penitentiaries.

ADDRESS BY JACKSON B. KEMPER,  
ON THE SUBJECT  
HOW MAY THE WISCONSIN REVISED STATUTES  
BE IMPROVED AND WHAT SHOULD CONSTITUTE A PROPER REVISION OF THE  
STATUTES. INCLUDING INDEX  
IMPROVEMENT.

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DELIVERED JUNE 28, 1917.

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The President of the Bar Association has asked me to lead a discussion on the question of "How May Wisconsin Revised Statutes be Improved, or, What Should Constitute a Proper Revision of the Statutes, Including Index Improvement."

While appreciating the honor thus conferred upon me, I accepted the invitation with considerable misgiving because I did not feel that I had any special qualification for enlightening the members of the Association upon this important subject. I had some ideas on the subject, however, which I wanted to exploit, and I trust that they may perhaps contain the germs of something useful.

There is, of course, no one book so generally used by, or so necessary to, Wisconsin lawyers as the Revised Statutes of the State. For that very reason it is of great importance to have it as near perfection as possible, but it must also be borne in mind that its great importance and its constant use necessarily subject it to more criticism than any other book which lawyers have occasion to use. I venture to say that the average lawyer has occasion to look into the Revised Statutes of Wisconsin twenty times to once that he examines any other single work, and naturally with such constant use the defects loom larger and larger, while the virtues of any revision are likely to be overlooked. Therefore, in offering any criticisms or any suggestions for possible improvement, I make them with diffidence, fully realizing that it is much easier to criticise than anything else, and realizing also that if the task of superintending the revision of the Statutes were laid upon me, that the profession and the State at large would probably receive a much inferior work to any of the various revisions that have gone before.

In this connection it may be worth while to briefly mention the various stages of revision of the Statutes. I believe that a volume was published in 1839 purporting to be a compilation of the Statutes of the territory then in force. I have never seen it, but it was certainly in no respect the equivalent of what we now know as a revised issue of the Statutes. In 1849, immediately after the admission of the State to the Union, the legislature appointed a committee to prepare a revision of the Statutes. The work was actually turned over to Mr. Charles M. Baker, of Lake Geneva, who prepared what we now know as the Revised Statutes of 1849, and which was used, together with the annual Session Laws, until 1858, when it was superseded by the Revised Statutes of that year. The work of revision was largely done by Judge David Taylor. Subsequently Judge Taylor himself brought out a two-volume work which was known as Taylor's Statutes and contained all the general laws down through the session of 1871. This was not an official volume, but was practically universally used until the revision of 1878. The Revised Statutes of 1878 are generally considered as a classic in a work of this kind in Wisconsin. The committee having it in charge was a very able one, consisting as it did of Judge Taylor, Col. William F. Vilas and J. P. C. Cottrill. With the exception of Taylor's Statutes, all of these works were in a single volume and without annotations. Indeed, in form and appearance the Statutes of 1878 and the present Statutes are not unlike, although the matter contained in the present Statutes is about three times that contained in the Statutes of 1878. This difference is made possible by the use of thinner paper, giving a considerably greater number of pages with not an appreciable greater bulk, and by the use of a much smaller type.

In 1883 Sanborn & Berryman published their Supplement to the Revised Statutes of 1878, containing the general laws enacted down to the publication of their volume, together with annotations to the Statutes generally. This was followed, in 1889, by Sanborn & Berryman's Statutes, a two-volume revision with annotations. Strictly speaking, this was not a revision of the Statutes, it being a private enterprise of Sanborn & Berryman, but it was generally adopted and used by both bench and bar.

In 1898 came the Revised Statutes of that year, officially prepared by Messrs. Sanborn & Berryman under a contract with the State. As you all know, this work was in two volumes, with annotations, and remained in use, supplemented by a so-called 3rd volume in 1906, until the Statutes of 1911 were brought out by the present reviser, Mr. L. J. Nash. The Statutes of 1911 and the subsequent volumes of '13 and '15 went back to the form of the old Statutes of '58 and '78; that is, they are single volumes without annotations.

In 1914 the present reviser brought out a separate volume of Wisconsin Annotations containing all of the annotations in the Statutes of 1898 and in Sanborn's Supplement of 1906, with additions made by Messrs. Sanborn & Sanborn and the reviser, bringing them down to include Volume 155 of the Wisconsin Reports and the contemporaneous volumes of the United States Supreme Court Reports and the Federal Reporter.

The reason which caused Mr. Nash to depart from the form of the Annotated Statutes of 1898 and return to a one-volume edition issued biennially, without annotations, was succinctly stated by him in an address delivered before the Board of Circuit Judges, from which I quote as follows:

"The last subsection of the act of 1909, prescribing some of the duties of the reviser, reads as follows:

'Subsection F: To formulate and prepare a definite plan for the order, classification, arrangement, printing, and binding of the statutes and session laws, and between and during sessions of the legislature to prepare and at the beginning of each session of the legislature to present to the committee on revision of each house, in such bill or bills as may be thought best, such consolidation, revision and other matter relating to the statutes or any portion thereof as can be completed from time to time.'

"That was the program the legislature prescribed for the reviser, and it was under that that the present reviser began his work.

"In the light of what had preceded this enactment, and in view of the intolerable condition in 1909 of our statute law, it seemed plain that the legislature extended its mandate to the reviser to formulate and prepare a new plan for the order, classification, arrangement, printing



and binding of the statutes and session laws; also, that the old plan of revision in a single bill and at one time of all the statutes in force, had been definitely abandoned. This view was strikingly supported by that part of the subsection which required the reviser to present at the beginning of each session of the legislature 'in such bill or bills as may be thought best such consolidation, revision and other matter relating to the statutes or any portion thereof as can be completed from time to time.' This was also a mandate that the new plan, whatever it might be, should contain the idea of legislative action in each successive session.

"The times when volumes of the statutes should be issued was, in fact, the principal feature that the reviser was required to report on. If you take the statute that I read to you and compare it with what has been going on you will find that about the only thing the legislature left for the reviser to determine was how often the book should go out. All the rest of that program had been worked out in the legislature before the office of reviser was created at all."

It is plain that the legislative plan called for an official reviser principally for two things:

*1st.*—At each session of the Legislature to present, or cause to be presented, such bill or bills as might be necessary to harmonize the provisions of the statutes and remove inconsistencies and discrepancies which are practically certain to occur in such a vast mass of statute law necessarily enacted in a more or less piece-meal way by each successive Legislature.

*2nd.*—To from time to time issue such revisions of the statutes as might be most desirable for the use of the officers of the State and the citizens at large.

Taking all things into consideration, in my opinion the plan of a permanent reviser is the best that could be devised, and I doubt if any more competent person could have been selected than the distinguished lawyer who has held the position from the beginning. Much hard and conscientious work has been done by the reviser and his assistants, for which all members of the bar should be deeply grateful. At the same time, I think that the reviser himself would be the first to acknowledge that there are sins of omission and commission,

both in the substance of the statutes and in the index. As my purpose in this paper is, in part at least, to criticise, let me give a few instances which have recently come under my personal observation.

First, two instances from the much abused index:

A few weeks ago I had occasion to answer a question on the liability of a express company attempting to limit its liability by an agreed valuation of the articles to be transported contained in its receipt or bill of lading. As the damaged goods had been transported from Wisconsin to Michigan, and therefore constituted an interstate commerce transaction, I looked first at the Compiled Statutes of the United States, found that "Express Companies" referred me to "Carriers," and under heading "Carriers" I promptly discovered what I was after. As my client had also inquired whether there would be any different rule in the case of packages conveyed entirely within the state, I then turned to the Revised Statutes of Wisconsin and looked first at "Carriers" since that had been the title under which the matter had been indexed in the United States Statutes. I found that the title "Carriers" referred, by way of cross-reference, to the title of "Quasi Public Corporations." When I looked for "Quasi Public Corporations" I found that there was no such title. It looked very much as though the persons in charge of the index, when they got as far as "Carriers" under "C", had intended to have a title under the heading of "Quasi Public Corporations" and when they reached the "Q" had forgotten all about it. The matter for which I was looking I found under the heading of "Express Companies," which, of course, was a perfectly logical place to index it so far as the matter in hand was concerned, but hardly cured the defect noted in the index under the more general title of "Carriers."

Now to give you some curiosities of more general moment. A few months ago I received a letter from a lawyer in Iowa with whom I had a slight acquaintance asking me if the marriage of first cousins was prohibited in Wisconsin, and if so whether such a marriage, if actually contracted, would be void or merely voidable. My recollection was very clear that the marriage of first cousins was permitted in Wisconsin, but remembering Lord Coke's dictum as to the folly of attempting to answer a statutory question without looking up

the statute, I proceeded to look it up, with what to me were some very surprising results. Under Chapter 107, entitled "Marriage" I found that Section 2330 provides, among other things, that "no marriage shall be contracted while either of the parties has a husband or wife living, nor between persons who are nearer of kin than second cousins, computing by the rule of the civil law." This section provided that the marriage of first consins was lawful until 1913, Chapter 709 of the Laws of 1913 having changed the word "first" to "second."

I then turned to Chapter 109, headed "Divorce," and I found that Sections 2349 and 2350 of the Revised Statutes of 1898, which provided what marriages should be void, had been repealed by Chapter 323 of the Laws of 1909 and that that same act had largely amended Section 2351, which provided for the annulment of marriages, so that that section, among other things, now provides that "a marriage may be annulled for any of the following causes existing at the time of the marriage,—” and among those causes is "consanguinity or affinity where the parties are nearer of kin than first cousins, computing by the rule of the civil law, but when such marriage shall not have been annulled during the lifetime of the parties the validity thereof shall not be inquired into after the death of either party."

I then turned to Section 4582, being the criminal statute on incest, and found that it provides,—“Any person being within the degree of consanguinity within which marriages are prohibited or declared by law to be incestuous and void, who shall intermarry with each other, shall be punished by imprisonment in the state prison not more than ten years nor less than two years."

I wrote to my friend in Iowa the result of my investigations and told him that so far as I could see, while first cousins were forbidden to marry in Wisconsin, nevertheless if they did so marry the marriage was not void, or even voidable, and could not be annulled; that probably the parties could get a divorce on the ground of having committed a crime and might have to go to state prison for the offense.

Of course, it is plain enough that the author of the change in Section 2330 in 1913 never looked at the other statutes which I have mentioned, and that the matter escaped the

reviser's attention, so that no legislation was offered in 1915 to cure the absurdity. I called the reviser's attention to this matter this spring after the Legislature was in session, but I do not know whether any bill to reconcile the statutes has been offered or not.

In looking over these same statutes on the question of domestic relations, I discovered another rather peculiar discrepancy. Section 2329 provides,—“Every male person who shall have attained the full age of eighteen years and every female who shall have attained the full age of fifteen years shall be capable in law of contracting marriage, if otherwise competent.” Section 2351, to which I have already referred, among the causes for which a marriage may be annulled, provides, under the heading of “Nonage of wife,” sub-section 6, the following: “At the suit of the wife when she was under the age of sixteen years at the time of the marriage, unless such marriage be confirmed by her after arriving at such age;” while sub-section 7 provides that the marriage may be annulled “at the suit of the husband when he was under the age of eighteen at the time of the marriage, unless such marriage be confirmed by him after arriving at such age.” So that while the marriage of a girl over fifteen and under sixteen is directly permitted by the one statute and declared to be lawful, yet it is ground for annulment under the other.

Both of these discrepancies in the Statutes are of a character which can be cured only by the Legislature. It would not, in my judgment, come within the authority of the reviser acting officially, but such discrepancies, and others which doubtless can be found in the Statutes, come within the duty of the official reviser “to prepare and at the beginning of each session of the Legislature to present to the Committee on Revision of each house such consolidation, revision and other matter relating to the Statutes or any portion thereof as can be completed from time to time.”

Having thus shown you that I am able to find some flaws in the Statutes as they exist at present, I turn to the more important question as to whether any reasonable suggestions can be offered looking to the improvement of our Statutes.

In the first place, as I have already said, I do not think any better plan can be devised than that of having a permanent reviser in charge of the work. Our statute law is cum-

bersome enough already, but it is very plain that it is going to grow in bulk for some considerable time at least. The increasing complexity of modern life in itself naturally calls for a considerable addition to the volume of the written law. I think we would all agree also that the American people have a strongly developed passion for statutory regulation, even in cases where there is no particular reason to believe that anybody will pay any attention to the Statutes after they are enacted, and in addition to all this there is a growing tendency to a codification of many branches of the law which our fathers and grandfathers were contented to have regulated by the principles of the common law. As examples of this last tendency, I need only call your attention to such chapters of the Statutes as the Negotiable Instrument Law, the Uniform Sales Act, the Warehouse Law, and others, and we all know that there are a number of other so-called uniform laws prepared and approved by committees of the American Bar Association which are very likely to receive statutory enactment before many years have passed. In addition to all this there are whole codes referring to subjects of what may be termed social, or even perhaps semi-socialistic, legislation, the best examples of which are the Workmen's Compensation Act and factory regulation, and which are likely to be followed before long by compulsory state insurance and other matters of that kind.

When we consider the mass of legislation so enacted every two years, it is, I think, obvious that the only means of coping with it so as to bring it into any degree of harmony is by a continuance of the office of the reviser of the Statutes.

In the address of Mr. Nash, from which I have already quoted, he says that it seemed to him that the only matter left to his discretion was the frequency and the form in which the Revised Statutes were from time to time to be issued. After careful consideration he determined upon the issuing of a bi-ennial edition of the Revised Statutes, and claims for it the advantage that it gives in a single volume the whole of the statute law after each session of the Legislature and that it is economical since by reason of the State having purchased the plates for the printing it is only necessary to insert every two years such new matter as may become necessary; in other words, as I understand it, the principle upon which the

present reviser is acting is that the Statutes are a sort of loose-leaf ledger, a large portion of which does not have to be disturbed but the new matter is slipped in wherever it may best come and sub-titles and sub-numbers adopted so as not to disturb the original numbering of the sections.

Three of these bi-ennial volumes have been issued and I think we have now had sufficient experience with them to determine whether the plan adopted is a good one or not. I am frank to say that when the learned reviser issued, in 1911, his first statement of the method which he intended to adopt I believed that he had lit upon what would probably be the most practical and useful method of revising the Statutes that had ever been tried. After my experience in the use of the three bi-ennial volumes I have changed my mind. The fundamental objection to the present plan, as I look at it, is this: That there never is, and never can be, at any time, a real revision of the Statutes, but merely shoving into each volume the new matter exacted by each Legislature in such place and under such sub-numbering as the reviser can best make it fit. To use the simile of a loose-leaf ledger again, if the Statutes of 1915, for instance, were bound as a loose-leaf ledger is, and the Session Laws of 1917 were printed on pages of the same size, any one could bring his Statutes up to date by slipping these pages in. Of course you understand that this is in many ways a far-fetched illustration. No one either could or would do this, nor, if it were done, would the volume be anything like as useful as the present bi-ennial revision is. It would be without an index, and it is not probable that the amateur efforts of the various members of the bar would produce anything like as consistent a whole as the careful and conscientious efforts of the reviser and his assistants have done. Nevertheless, the principle remains, that the present method does not, and cannot, produce a scientific revision of the Statutes; such a revision, for instance, as that of 1878 was to the statute law as it then existed.

The question, however, narrows itself down to this: Is it a necessity, or at any rate a great practical advantage, to have the whole mass of the statute law contained in a single volume and have it gotten out bi-ennially after the session of each Legislature? If the advantage of such a volume outweighs all disadvantages, then I do not think that any practical improve-

ment of the present plan can be devised. Of course, a complete revision could be made every two years, but the expense would be prohibitive, either to the State or to the purchasers, or, more probably, both.

With considerable hesitation I venture to suggest the following as being a plan that would be more generally acceptable to the bench and bar than the one in use at present. It is this: That an edition of the Revised Statutes be gotten out by the official reviser every six years; that is, that it should contain the changes made by three sessions of the Legislature; that the office of the reviser of the Statutes be retained and such revision be gotten out by such permanent official; that in such revision the Statutes be re-cast—that is, re-arranged and re-numbered—and that the present cumbersome, and I think to many of us irritating, method of sub-numbering be discarded; that such six-year edition be in two or more volumes, as may be most convenient, and that the annotations be printed under the respective statutes to which they refer, in the plan familiar to us in the various Sanborn & Berryman editions. I would suggest, however, that the bulk of these annotations could be cut down very materially. In the first place, the references should, I think, be confined solely to Wisconsin decisions and to decisions of the Supreme Court of the United States. In the next place, in many instances mere reference to the cases would be sufficient without digesting.

Such a revision, while undoubtedly losing the advantages in the present bi-ennial method, would, I think, be more satisfactory on the whole. The experience of the past, ever since Taylor's Statutes, seems to indicate that there was an active demand—one may say a necessity—for some form of supplement or new edition every five to seven years; that within such time limit the profession and the community at large seemed to be able to get along very well without a new edition of the Statutes. If you will stop to think a moment you will realize that if the Revised Statutes were gotten out every six years you would only be under the necessity of using two volumes of the session laws before the new edition came out. That is not such an onerous matter that it could not be coped with, and I think that any inconvenience so caused would be more than compensated for by the opportunity offered to the

reviser to bring out a thorough, complete and scientific revision every six years.

I know that there are many members of the bar who will not agree with me in my idea that the annotations should be printed immediately under the statutes and in the same volumes. However, I am confirmed in my opinion that it will meet the approval of the majority by the fact that books which are gotten out not officially but purely to sell on their merits, such as West's Compiled Statutes of the United States or the Federal Statutes of the United States Annotated, have adopted that method and have apparently met with a sale which is remunerative to their publishers. As you know, the West Publishing Company has just brought out a new twelve volume edition of the Compiled Statutes, and the Federal Statutes Annotated is being published in a new edition which, if I remember rightly, will run to some fifteen or sixteen volumes, and in spite of the very serious expense connected with the purchase of these books there is an evident demand for them, indicating to my mind that a very large number of lawyers like this system of publishing and annotating Statutes and find it useful.

As matters stand to-day, it is practically a necessity to buy the session laws anyway. It would seem, therefore, that the expense of a six-year edition of the Statutes, even though entirely new plates were used and the book published in two or three or even four volumes, would be but little greater than the expense now involved in buying a bi-eennial edition every two years in a single volume together with a separate volume or volumes of annotations, because of course, as time goes on, the annotations will increase to such an extent that additional volumes of annotations will have to be published or a new edition of the volume of annotations gotten out.

I have left to the last the vexed question of the index. I suppose every member of the Association has frequently and energetically cursed the present index, but those of us who have had occasion to use the former editions, from 1878 down, must bear in mind that the indexes of each and every of those volumes were damned just as heartily. Indeed, during the nearly thirty years that I have been practicing law it has been a tradition among the bench and bar that the index to whatever was the current edition of the Revised Statutes



was the "worst possible" and was probably devised by fiends incarnate for the express purpose of misleading the patient seeker after information on the laws of his state. Now, as I indicated early in this paper, the index of the present edition is far from perfect, just as its predecessors were far from perfect, but I am frank to say I have no concrete suggestion as to what could be done to improve it, other than the hard labor of trying to remove defects as they are found. The criticism has been made of the present index that there are too many cross references. I apprehend, however, that if any great number of these cross references were eliminated that the unfortunate reviser would be still more harshly criticised for the reason that there were not enough cross references. The index bears on the face of it the evidence of much labor. The index to the Statutes of 1915 is better than that for the Statutes of 1911. It is reasonable to suppose that the index to the Statutes of 1917 will be better than that to the Statutes of 1915. The plan now adopted, of a bi-ennial edition of the Statutes, does not in the nature of things make for a satisfactory index. The editions must be gotten out hurriedly and the new matter cannot be inserted scientifically. A complete revision made at longer intervals would, assuming that the same amount of care, labor and skill were given to the index, in all probability produce a more satisfactory index.

It has been suggested that a better index could be obtained if the work of preparing it were committed to some law book publishing company. The West Publishing Company of St. Paul has been particularly mentioned, and it is certain that their index work on the new Compiled Statutes of the United States is very good. I was also advised that the West Company had prepared the index to the last edition of the Revised Statutes of Minnesota and that it was very satisfactory to the bar of that state. It is obvious that the knowledge and ability required to make a good revision of the Statutes would not necessarily make the reviser a good maker of an index. The two subjects are entirely different. It struck me, therefore, that the idea of committing the work of preparing an index to the West Company, or some other law book publishing company, had much to recommend it, since such companies necessarily have a skilled corps of index makers for the various books which they get out. Before committing

myself to recommending such change, however, I thought it would be wise to find out what Minnesota lawyers thought upon the subject, and I therefore wrote to my friend Mr. Stiles W. Burr, of the St. Paul bar and one of the most thorough lawyers whom I have the pleasure of knowing, and asked him what his experience had been with the index prepared by the West Company. You may be interested in his reply, which is as follows:

"I have yours of June 2nd. The statement made to you is practically true, as a matter of substance, although not strictly accurate. The Minnesota statutes were *revised* by a Commission whose work was completed in 1905. The last previous *revision* was in 1866, although there had been several *compilations* in the meantime, one of which was made by the West Publishing Company as a private enterprise.

The task of *editing* the "Revised Laws of 1905," as the revision was called, was committed to one Dunnell, and the index was prepared by Dunnell, or under his supervision. It is my impression that the Dunnell index has generally been regarded as unsatisfactory. That is my opinion at least. In 1909 the West Publishing Company published a supplement of the Revised Laws of 1905. This supplement was compiled and annotated by Francis B. Tiffany, a member of the St. Paul Bar, who has done considerable special editorial work for the West Publishing Company and is the author of one or two text books. The supplement was accompanied by an index prepared by the editorial staff of the West Publishing Company. In 1911 the Legislature created a Commission, consisting of the Governor, the Chief Justice of the Supreme Court and the Attorney General, who were directed to enter into a contract on behalf of the State for the preparation and publication of a compilation of the general statutes in force in 1913, including the session laws of that year. Such a contract was made with the West Publishing Company, Mr. Tiffany (the editor of the 1909 supplement) being designated as editor. This compilation is known as the "General Statutes of Minnesota 1913." The preparation of the index to this compilation was committed by the Commission to A. C.

Wandrei of the West Publishing Company editorial staff.

The 1913 index is undoubtedly an improvement on the Dunnell index to the Revised Laws of 1905 and on the index found in the 1909 supplement. But there is considerable divergence of opinion as to whether it is really a good index. Some lawyers think well of it, but I have heard it severely criticised by others. And I am not at all sure that it can truthfully be said to have given general satisfaction; although it is probably more satisfactory than any statute index previously published in Minnesota.

It so happens that since the 1913 statutes were published neither Mr. Glenn nor I have had any occasion to make comparisons with the Wisconsin statutes. But for a number of years prior to 1912 I used the Wisconsin statutes a great deal; and I always thought your compilations very much superior to ours, in arrangement, annotation and indexing. Such also was the view held by most Minnesota lawyers who used the Wisconsin statutes—so far at least as I heard it expressed. A rather close friend of mine, counsel for some of the lumber companies, has practiced in Wisconsin almost as much as in Minnesota—and still does. I have talked with him since receiving your letter and he tells me that while the Minnesota compilation of 1913 is a distinct improvement on anything that has gone before, and brings Minnesota and Wisconsin nearer to a parity, he still thinks the Wisconsin system better than ours. And there is no question whatever but that the editing and the indexing of your session laws is incomparably better than ours.

Since the above was written I have talked with one of my friends who denies emphatically that the index to the Minnesota Statutes of 1913 is an improvement on previous indexes and who says that his view is pretty generally shared by other lawyers of his acquaintance. He says that the most to be said of it is that it is no worse than its predecessors. So there you have another point of view!"

I have heard Michigan and Illinois lawyers speak of their respective statutes, and of the index thereto, in terms quite as harsh as anything I have ever applied to ours. So far as

the statutes of other states are supposed to have a marked superiority in form and convenience of use over our own, I have come to the conclusion that it is another of those cases where "glories, like glow worms, afar off shine bright, but looked at near have neither heat nor light."

I believe that the substitution of an edition of the Revised Statutes every six years would give on the whole greater satisfaction than the present method, or any which has been tried in the past, assuming that the work is continued in the hands of the present reviser, or equally competent successors, but, even as matters now stand, I believe we have a much better system of revision than we have had in the past or than any of our neighboring states have.

ADDRESS OF H. O. FAIRCHILD  
ON THE SUBJECT  
HOW MAY WISCONSIN REVISED STATUTES BE  
IMPROVED AND WHAT SHOULD CONSTITUTE A PROPER REVISION OF THE  
STATUTE, INCLUDING INDEX  
IMPROVEMENT.

DELIVERED JUNE 28, 1917.

Mr. President and Gentlemen of the State Bar Association:

The President of this association has requested me to add my bit to the discussion of the question, "How May the Wisconsin Revised Statutes be Improved and What Should Constitute a Proper Revision of the Statutes."

It is needless to say that to discuss this topic with any degree of completeness would extend the discussion beyond permissible bounds; and I shall therefore content myself with a few general suggestions, rather than indulge in any elaborate criticism of present methods.

I do not understand that it is the purpose of this discussion to point out specific errors or mistakes that have been made in preparing the revisions which have been put forth by Mr. Nash, the reviser, or the mistakes of the Legislature itself in enacting inconsistent statutes, or otherwise, but rather to suggest in what way, if any, the plan or method of revision adopted by the reviser, or heretofore existing, may be improved, to the end that a more perfect and accurate revision including indexing may result.

*First as to the Index.* I think it will be quite generally admitted that the index of our present Revised Statutes is most imperfect, not only in its failure to include either a logical or illuminating reference to the topics embraced in the statutes, but because of its failure to index at all many topics. I shall not attempt to verify this statement by reference to any specific instances, since it seems to be the unanimous verdict of the Bar that the index is so imperfect that it now requires a lawyer two or three times as long to search out particular provisions of the statutes, as was required under

the revision of either 1878 or 1898, and in many instances one almost despairs of finding at all what he searches after.

It must not be overlooked, however, that the making of an index is a most difficult task. It requires the highest order of legal learning and sense of logical arrangement of subjects. All of us who know Mr. Nash would say that he possesses peculiar fitness for this task; but it is difficult to believe that he could have given his usual painstaking care to this work, if, in fact, it is from his hand at all. As to the facts in this regard I am personally ignorant. A practically perfect index may be the subject of criticism by some fairly good lawyers. The method of approach to a subject may be and usually is very different with different lawyers. One lawyer will go to an encyclopedia of law or a digest of court decisions and at once turn to the particular line of decisions, or the exact topic he wishes to find; while another lawyer may wander through the books for hours in search of the very same information before he finds it, and may even fail entirely to find it. Some lawyers intuitively go to the true source of the information they seek after because they know under what head it should logically appear; while other lawyers will criticize an index, however perfect, through lack of this enlightened comprehension of the fundamentals of the law. The average lawyer, however, is entitled to have the statutes of his state so indexed that he may readily find what is there, and if there is any doubt as to the strictly proper manner of indexing a particular section or subject of the statutes there is no reason why it should not be indexed under more than one head, so that it may be readily found by even the average man, whether he be a lawyer or not. Often men who are not lawyers are required to examine the statute law of the State, and the index should be simple and enlightening enough to meet the comprehension of such men. In fact A B C simplicity should be the guide of the index-maker. It would be far better to have the index contained in a separate volume, if it need be so extended as to make its inclusion in the Revised Statutes themselves too bulky for convenient use. The index of the Federal Statutes is now prepared in that way, and the Michigan Compiled Laws, which seem to us almost ideal in their plan, arrangement and preparation, have long had a separate index volume. Our Revised Statutes of 1915 have reached, it would seem,

the limit of size for convenient handling. The addition of the laws of 1917 to the present volume will make the next revision too bulky for convenience.

It should be a matter of serious consideration whether future revisions should not be bound in two or even more volumes, especially if annotations and a history of the sections are to be included, which would seem the wise thing to do. Personally I believe it preferable to have the Statutes in two or even three volumes so that annotations may accompany the sections annotated, and sufficient room be afforded for an enlightening index. If in three volumes, abundant room for annotations and such an index would be afforded. We have had considerable experience in the use of the Michigan Compiled Laws, which are now bound in six or seven volumes and earlier in three or four, with a separate volume for the index, and I do not find any inconvenience in readily finding what I am in search of or in handling the books. The expense of the set is its only drawback, if it have any. The same is true of the Annotated Federal Compiled Laws. We do not believe the syllabi of annotations should be incorporated in the revision, but merely a concise statement of the point of the title of the case—something after the order of Rose's Notes to the Decisions of the United States Supreme Court.

*Now as to the Method of Revision.*

The most important branch of the topic under discussion, as it appears to me, is that of revision as distinguished from compilation. I do not believe the present method of revision is a proper one. It is not conducive to certainty or harmony in the statutory law or convenience in finding it. Any claim of economy in the publication of our Statutes should not be permitted to imperil either their certainty or harmony or impair their ready and convenient use. I am in accord with Mr. Kempter's view to the effect that we should have periodical revisions so that when a revision is made it will contain, in succinct and logical arrangement, all the existing general statutory law of the State, except perhaps the session laws of the particular legislature which makes the revision. The period of six years between revisions, named by Mr. Kempter, would seem neither too long or too short. The practice of publishing the Revised Statutes every two years we think should be discontinued, not only as a useless expense to the

State, but to the Bar; and between revisions we should return to the former system of indexing our session laws, so that each volume of session laws will contain a complete index of all Statutes passed since the preceding revision. Thus we will have constantly before us a perfect index of all the laws. This method of indexing session laws has long prevailed in Michigan and is very satisfactory we understand to the Bar of that state, and, as far as we know, to those who have occasion elsewhere to make use of the Michigan Statutes. This system of indexing was adopted by our Legislature in 1885, and, as we believe, greatly to the disappointment of the Bar of the State, discontinued ten years later. The fact that the last previous revision was in 1878, so many years before the plan was adopted, finally required such an extended index in each volume of the session laws that it was thought necessary to discontinue that method; but when, as we proposed, there is a revision every six years, this method of indexing may be conveniently and economically pursued with great saving of time and temper on the part of those who make use of the published statutory laws of the State.

It seems to us that the decimal method of section enumeration is preferable. The letter numbering and all other methods except the decimal, pure and simple, in our view should be discontinued. The sub-section numbering should also, to a very large extent, be discontinued. For convenience of reference and in order to preserve in its integrity the decimal method, the sub-sectioning should be dispensed with except where the context makes it absolutely necessary or plainly preferable. The subject of different chapters is frequently remembered from the chapter numbers, and, under the decimal method of enumeration, the general subject of the section may often be known from the whole number preceding the decimal. When you see a section number beginning with 12 you would know that it relates to "Elections"; so when you see a section number beginning with the figure 113 you know it relates to "Circuit Courts", or beginning with 176 that it has to do with "Evidence". A uniform and simple method of numbering should be pursued throughout the Statutes, and the decimal system seems to us to be the most convenient, simple and informing method that can be adopted.



We believe it will generally be thought advisable to retain the services of a permanent reviser, not only from the standpoint of economy, but of efficiency. The work of the present reviser has been of great value to the State, and, with broader powers, directed along the lines suggested, might be of still greater benefit. In order to effect a periodical revision we think the reviser should be required to make report to the Legislature by which the revision is to be made, at the opening of the session, of all completed changes in the Statutes since the previous revision. If sections of the Revised Statutes have been amended, expressly or by implication, the report should set out the section as amended, and how. So should all repealed sections be reported as repealed. If new sections should, in the view of the reviser, be added, or old ones repealed or amended to correct errors or to perfect or make certain or consistent the remaining sections, or to enact substantive law, the reviser should frame and make report of such needed changes. In effect his report should show to just what extent there should be revision, or changes in the existing Revised Statutes. We understand a number of bills have been introduced at this session of the Legislature to some extent covering this subject, but not for the purpose here suggested or so broad in scope. Bill No. 643S is one of these bills. The title to that bill, in itself, is a very potent argument in favor of a periodical revision. It reads: "A bill to repeal expressly certain sections of the Statutes that have been either superseded or repealed by implication; to repeal certain sections of the Statutes that are duplicates of other sections; to repeal certain sections of the Statutes and certain session laws that have been declared invalid by the Supreme Court; to strike out or remove obsolete and dead matter from certain sections of the statutes; to renumber and relocate certain sections of the statutes that have been improperly classified; to correct in certain sections of the statutes mistaken references to other sections; and to correct typographical errors, misprints and other errors in certain sections of the Statute."

This bill, which must have originated with the reviser himself, shows that he fully appreciates the needs of the situation, and is doing what he can—under the powers given him—to perfect the Statutes. This bill anticipates somewhat the

suggestion we are making. The legislature, to which the report we have spoken of is to be made, could, by a committee, inquire into the subject of the report and by bill make whatever changes in the Statutes they think to be required, and authorize the reviser to prepare and publish as soon as may be thereafter a revision with such changes incorporated, so as to embrace the entire general statutory law of the State, except that to be embraced in the then current volume of session laws. The revision would thus be made by the legislature instead of a compilation by the reviser. The changes made in existing statutes during that session of the Legislature could readily be made to conform, as to section numbers, to the enumeration of the revision of that session. The great body of the Statutes would thus remain unchanged, and the added portions would be made to conform to the revised enumeration. Thus all the deadwood of the Statutes would be cleared away every six years and a consistent and complete revision made, embodying the entire general statutory law of the State. It would seem to be quite a difficult matter to have a revision by the Legislature itself, which will include the laws of the then current session. It would involve a calling together of the legislature after adjournment to receive and act upon the report of its revising committee, and the expense and inconvenience of such a plan would make it unpopular if not prohibitive. Under the suggested system each revision would include the Statutes enacted during the last three sessions of the Legislature and, therefore, be uniform in its periodicity. Of course, if it should be thought well to have the session laws of the current session included in the revision, this might be done by reconvening the Legislature to receive a report of its revising committee after the work of inclusion has been completed.

ADDRESS BY CLAIRE B. BIRD  
ON THE SUBJECT  
THE RIGHT OF THE INDIVIDUAL STATES TO  
PASS LOCAL LAWS IN CONFLICT WITH  
UNITED STATES TREATIES WITH  
FOREIGN POWERS.

DELIVERED JUNE 28, 1917.

This is the topic given me for discussion. Noting the words "right" and "in conflict" there is nothing to discuss, No state has any right to pass any law which conflicts with an existing treaty.

The Federal constitution so far as it speaks is our highest law.

It provides:

"No state shall enter into any treaty, alliance or confederation"

Nor

"enter into any agreement or compact with another state or with a foreign power, or engage in war, unless actually invaded or in such imminent danger as will not admit of delay". (Art. I, Sec. 10.)

Then among the powers granted to the executive is the following:

"He shall have power by and with the advice and consent of the Senate to make treaties provided two-thirds of the Senators present concur." (Art. II, Sec. 2 (2).)

Then the constitution further provides:

"This constitution and the laws of the United States which shall be made in pursuance thereof; and all treaties made or which shall be made under the authority of the United States, shall be the Supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding." (Art. VI.)

Language could hardly be plainer. These constitutional provisions and the long line of decisions under them make

plain the supremacy of any federal treaty over any state constitution or statute.

In view of the late discussion concerning the Japanese-California question, it is well to consider the matter further. Many have treated the western problem as new. It is not. California and Oregon some thirty years ago raised similar questions and they were specifically decided by the federal courts in those states. Those cases went no further because the logic of the decisions was too plain to justify appeal. I will refer to them later.

The question, however, does suggest the extent of the treaty-making power. If the President, the Senate concurring, assume to enter into a treaty, but acts beyond his delegated power, then any conflicting state law will prevail, not because it is paramount to a valid treaty, but because there is no valid treaty. The scope of an agent's authority is always a subject of inquiry. Searching authorities for limitations upon this power we find that thus far no treaty which our government has assumed to make has ever been held by our Supreme Court to have been *ultra vires*. Some treaties have been construed contrary to what some parties have claimed for them, on the theory that the court did not think Congress intended by them to invade certain states rights, but none has been held void because any state rights limited the power.

The scope of the power must be found in the constitutional definition.

Examining the constitutional grant of powers generally we find as to most of such granted powers express limitations.

The Executive is granted certain specific powers. The two which find their definition in the grant themselves are that making him Commander in Chief of the Army and Navy, and that giving him power to make treaties. His authority as Commander in Chief is limited by at least one prohibition, to-wit: against quartering soldiers in any house in time of peace without the owner's consent, or in time of war except in the manner prescribed by law.

The judicial power is granted without definition other than such as the words imply, but the subjects to which it extends are specifically stated. The constitution then contains numerous prohibitions upon the way judicial power shall be exercised.

The legislative power is specifically outlined. The subjects upon which Congress may act are expressly stated. Lest others might be implied the bill of rights expressly says that all other powers are reserved to the states. Then within those admitted powers numerous express limitations are made; Congress shall make no law concerning religious rights, abridging the freedom of speech or of the press, or the right of assembly or petition, etc.

Then in order that federal power may not be interfered with and that the citizens may not be disturbed by any state in the exercise of certain rights there is a lengthy list of prohibitions upon the power of the states to do certain things.

This recital of powers and limitations is elementary and trite. It is made to emphasize the fact that, whereas the constitution gives to the federal authority and prohibits to the states the power to make treaties, it nowhere in any manner limits the subject matter or the terms of those treaties.

The necessary rule of construction requires us to examine the then existing subject matter and usual terms of treaties as customarily made by sovereign nations. That investigation shows treaties with reference to commercial relations, rights of citizens of one country to live and hold property in another, the acquisition and cession of territory, punishment of citizens of one country for acts against the dignity of the other, surrender of persons for trial in foreign courts, payment of indemnities, pledges of territory and jurisdiction over citizens within them as security for promised indemnity, and even the surrender of national existence. This inquiry develops no limitations upon the subject matter or the terms of the treaty making power as exercised by sovereigns. Sometimes treaties have been entered into by negotiation at arms length; sometimes they have been compelled by overwhelming force.

Are there then no limitations in our government? Have we granted the President the power, if two-thirds of the Senate concur, to contract some of our citizens into slavery on foreign soil in order to acquire for the rest of us desirable rights? May this treaty power make, and the President then use all the power of the nation to enforce, an agreement that all the inhabitants of California shall be transported to Formosa, a selected number to be devoured by cannibals, the rest

to labor as Japanese slaves, and in their place the State of California be populated by Japanese citizens with autocratic powers? Plainly there must be some limitation upon this power. What then is the rule by which in close and doubtful cases that power is to be measured?

First let us observe a practical limitation standing in the way of enforcement. Treaties under the constitution are not paramount to acts of Congress. They are of equal rank. Therefore, a subsequent act of Congress may repeal a treaty. When that is done the treaty is at an end. It ceases to be the supreme law of the land or any law at all. No person can claim any rights under it in any of our courts. The aggrieved nation may have a remedy, but it is not judicial; it is to be sought in such way as it may deem its national honor and welfare require. Such congressional repudiation, however, constitutes a breach of faith of the government and its exercise is nothing less than national humiliation.

But we find one positive and distinct limitation upon the power itself, to-wit: The other terms and provisions of the constitution which creates this treaty-making power. Any treaty, like any act of Congress, which violates a constitutional provision is void as *ultra vires*. The guaranties of the constitution are paramount to the power of the President to contract, as they are paramount to the power of Congress to enact. It therefore is plain that no treaty can deprive *any citizen* of any right secured to him by the constitution.

It also follows further that no treaty can interfere with any right which the constitution secures to *any state*. This includes of course its right to integrity as a state.

These limitations of the treaty-making power as here outlined find statement in the case of *Geofrey vs. Riggs*, 133 U. S., 258, 267, where the rights of a French citizen to inherit lands contrary to the statute of Maryland was upheld. The Court there said:—

“That the treaty power of the United States extends to all proper subjects of negotiation between our government and the governments of other nations, is clear. It is also clear that the protection which should be afforded to the citizens of one country owning property in another, and the manner in which that property may be transferred, devised or inherited, are fitting subjects for such

negotiation and of regulation by mutual stipulations between the two countries. As commercial intercourse increases between different countries the residence of citizens of one country within the territory of the other naturally follows, and the removal of their disability from alienage to hold, transfer and inherit property in such cases tends to promote amicable relations. Such removal has been within the present century the frequent subject of treaty arrangement. The treaty power, as expressed in the Constitution, is in terms unlimited except by those restraints which are found in that instrument against the action of the government or of its departments, and those arising from the nature of the government itself and of that of the States. It would not be contended that it extends so far as to authorize what the Constitution forbids, or a change in the character of the government or in that of one of the States, or a cession of any portion of the territory of the latter, without its consent. (Citing case.) But with these exceptions, it is not perceived that there is any limit to the questions which can be adjusted touching any matter which is properly the subject of negotiation with a foreign country." (Citing cases.)

This brings us to the question sometimes suggested: Does the subject matter of the treaty-making power extend to the reserved police power of the states? This question has been discussed pro and con in text books and magazine articles. When, however, the logic of decided cases is applied to the situation, it seems no longer an open question.

The people did not grant to the federal government, but reserved to the states, the right to exercise police power. The Federal government therefore has no police power except such as may be incidental to its granted powers. However, within the scope of the powers granted to the Federal government, the action of the Federal government controls over state action, no matter whether the basis of the state action be the police power or what. An act of the federal government within the subject matter of its jurisdiction cannot be "the supreme law of the Land, anything in the constitution or laws of any state to the contrary notwithstanding," if any state act, no matter how plainly within its reserve power, can in any way interfere with the Federal act.

We must not be confused by the holdings that certain constitutional guaranties, the fourteenth amendment for instance, did not intend to bar the states from exercising their ordinary police power jurisdiction.

The rule has long been established that when the Federal government acts within its admitted jurisdiction, those acts are valid, even though they interfere with state police power. Some Federal acts have been construed as not intending to disturb the state police power, but that is a question of what was done, not of what power existed. In *Hennington vs. Georgia*, 163 U. S., 299, in discussing a conflict between the right to regulate inter-state commerce and state police power, the Supreme Court said:

“Of course, if the inspection, quarantine or health laws of a State, passed under its reserved power to provide for the health, comfort and safety of its people, come into conflict with an act of Congress, passed under its power to regulate interstate and foreign commerce, such local regulations, to the extent of the conflict, must give way in order that the supreme law of the land—an act of Congress passed in pursuance of the Constitution—may have unobstructed operation. The possibility of conflict between State and national enactments, each to be referred to the undoubted powers of the State and the Nation, respectively, was not overlooked in *Gibbons vs. Ogden*, and Chief Justice Marshall said: ‘The framers of our Constitution foresaw this state of things, and provided for it, by declaring the supremacy not only of itself, but of the laws made in pursuance of it. The nullity of any act inconsistent with the Constitution is produced by the declaration that the Constitution is the supreme law. The appropriate application of that part of the clause which confers the same supremacy on laws and treaties is to such acts of the State Legislatures as do not transcend these powers, but though enacted in the execution of acknowledged state powers, interfere with or are contrary to the laws of Congress, made in pursuance to the Constitution, or some treaty made under the authority of the United States. In every such case the act of Congress, or the treaty, is supreme;



and the law of the State, though enacted in the exercise of powers not controverted, must yield to it'."

Again in *Henderson vs. New York*, 92 U. S., 259, 270, in holding void a New York Harbor regulation, the Court said:

"But assuming, that, in the formation of our government, certain powers necessary to the administration of their internal affairs are reserved to the States, and that among these powers are those for the preservation of good order, of the health and comfort of the citizens, and their protection against pauperism and against contagious and infectious diseases, and other matters of legislation of like character, they insist that the power here exercised falls within this class, and belongs rightfully to the States.

This power, frequently referred to in the decisions of this court has been, in general terms, somewhat loosely called the police power. It is not necessary for the course of this discussion to attempt to define it more accurately than it has been defined already. It is not necessary, because whatever may be the nature and extent of that power, where not otherwise restricted, no definition of it, and no urgency for its use, can authorize a State to exercise it in regard to a subject-matter which has been confided exclusively to the discretion of Congress by the Constitution."

Again in *Railroad Co. vs. Husen*, 95 U. S., 465, 471, in holding void a Missouri Statute prohibiting transportation except under certain conditions of cattle through the state, the court while assuming that a general regulation applying to diseased cattle might be valid because such cattle might not be proper subjects of interstate commerce, says:

"But whatever may be the nature and reach of the police power of a State, it cannot be exercised over a subject confided exclusively to Congress by the Federal Constitution. It cannot invade the domain of the national government. It was said in *Henderson et al., vs. Mayor of the City of New York et al., supra*, to 'Be clear, from the nature of our complex form of government, that whenever the statute of a State invades the domain of legislation which belongs exclusively to the Congress of the United States, it is void, no matter under

what class of powers it may fall, or how closely allied it may be to powers conceded to belong to the States.' Substantially the same thing was said by Chief Justice Marshall in *Gibbons vs. Ogden*, 9 Wheat. 1, Neither the unlimited powers of a State to tax, nor any of its large police powers, can be exercised to such an extent as to work a practical assumption of the powers properly conferred upon Congress by the Constitution."

Whoever should claim greater rights of the states than did John C. Calhoun would be either excessively brash or excessively ignorant. It is pertinent therefore to inquire what Mr. Calhoun had to say. Early in his public career in 1816 in discussing the terms of our treaty with Great Britain he said:

"The limits of the former (legislative power) are exactly marked; it was necessary to prevent collision with similar co-existing State powers. This country is divided into many distinct sovereignties. Exact enumeration here is necessary to prevent the most dangerous consequences. The enumeration of legislative powers in the Constitution has relation then, not to the treaty power, but to the powers of the State. In our relation to the rest of the world the case is reversed. Here the States disappear. Divided within, we present the exterior of undivided sovereignty. The wisdom of the Constitution appears conspicuous. When enumeration was needed, there we find the powers enumerated and exactly defined; when not, we do not find what would be vain and pernicious. Whatever, then, concerns our foreign relations; whatever requires the consent of another nation, belongs to the treaty power; can only be regulated by it; and it is competent to regulate all such subjects; provided, and here are its true limits, such regulations are not inconsistent with the Constitution." (Cong. Rec. 1st Session 14th Cong. 531.)

Then late in his life, 1844, as Secretary of State, in discussing a proposed treaty with the German States, he said:—

"The treaty-making power has, indeed, been regarded to be so comprehensive as to embrace, with few exceptions, all questions that can possibly arise between us and other nations, and which can only be adjusted by their mutual consent, whether the subject matter be comprised

among the delegated or the reserved powers." (VI Moore Int. Law Dig. 164.)

It is true the United States Supreme Court has not as yet specifically decided a case in which the plain unambiguous words of a treaty upon the subject matter admittedly within the treaty-making power came into conflict with the plain unambiguous words of a state statute admittedly within state police power scope. But what of it? The rule in the inter-state commerce cases that a Federal act concerning that subject-matter controls over police power regulations by the states is conclusive here. In those decisions the Court at times, as is noticed, refers to the treaty-making power as a similar paramount power.

The power to tax, however, is surely as essential a part of sovereignty as is the exercise of the police power, yet when a treaty right interferes with the right of the state to tax, the treaty controls. This was decided in the case of the *Kansas Indians*, 5 Wallace, 736, and the *New York Indians*, 5 Wallace, 761. A treaty with the Indians assured them the right to hold their lands in severalty, free from taxation or enforced sale. This treaty right was held paramount to the power of the state to subject those lands held in severalty to taxation. True, those lands, because of such treaty regulation, had not passed out of the domain of the federal government, but the basis of the decision, was the treaty rights as paramount to the right of state taxation.

Then in *Ward vs. Race Horse*, 163 U. S., 504, the Court held that the treaty with the Bannock Indians, giving them hunting privileges within the State of Wyoming, did not prevent that state from passing such game laws, as, except for the treaty, it would have power to pass. The decision, however, turns on whether or not the treaty was still in existence. It was assumed by all the Court that if it was still existing, the game laws must yield. It was held by a divided Court that the act admitting Wyoming as a state repealed the treaty.

It is established by a long line of decisions that treaties regulating the descent of property, its escheat to the state, etc., controlled over conflicting state statutes. This was because such regulations are matters usually included within treaties between nations. No case involving the right of residents and carrying on of business secured by treaty has

reached the Supreme Court of the United States. It is perfectly plain, however, that this right of residence, travel and labor are just as much within the subject matter of treaty between nations, as is the right of descent of property. In fact a numerical count might disclose that rights of persons within alien territory, as often as rights of property, have been made the subject matter of treaties.

The question, did, however, arise in California and Oregon, as suggested in my opening, and to those cases I now refer.

In *Baker vs. Portland*, 5 Sawyer, 566, Judge Deady held void an Oregon statute which prohibited the employment of Chinese laborers on any street or public works in the state. There then existed a treaty with China providing that the citizens of each country resident in the other

“shall enjoy the same privileges, immunities and exemptions in respect to travel or residence as may be then enjoyed by the citizens or subjects of the most favored nation.”

It was held that this of necessity gave the citizens of China, resident in Oregon, the same right “to live and to labor for a living” that our own citizens had. Judge Deady, among other things, said:

“Whether it is best that the Chinese or other peoples should be allowed to come to this country without limit and engage in its industrial pursuits without restraint is a serious question, but one which belongs solely to the national government. Upon it there has always been a difference of opinion, and probably will be for years to come.

But so far as this court and the case before it is concerned, the treaty furnishes the law, and with that treaty no state or municipal corporation thereof can interfere. Admit the wedge of state interference ever so little, and there is nothing to prevent its being driven home and destroying the treaty and overriding the treaty-making power altogether.”

In *re Parrot*, 1 Federal Reporter, 481, Judge Sawyer held void, because in conflict with the same treaty above mentioned, the provision of the California constitution prohibiting any corporation formed under California law from employing any Chinese or Mongolian. After disposing of the claim that

since California was there granting corporate power it might grant it on any conditions it pleased, it is held that this constitution also violated the fourteenth amendment which insured to every person within our jurisdiction the equal protection of the laws. Upon the point that it is also void as conflicting with the treaty, after quoting the constitution and Chief Justice Marshall's opinion in *Gibbon vs. Ogden*, he discusses the numerous decisions in which state laws as to descent, title of property, and the like have been held void when in conflict with the treaty. He then says:

"As to the point whether the provision in question is within the treaty-making power, I have as little doubt as upon the point already discussed. Among all civilized nations, in modern times at least, the treaty-making power has been accustomed to determine the terms and conditions upon which the subjects of the parties to the treaty shall reside in the respective countries, and the treaty-making power is conferred by the constitution in unlimited terms. Besides, the authorities cited on the first point fully cover and determine this question. If the treaty-making power is authorized to determine what foreigners shall be permitted to come into and reside within the country, and who shall be excluded, it must have the power generally to determine and prescribe upon what terms and conditions such as are admitted shall be permitted to remain. If it has authority to stipulate that aliens residing in a state may acquire and hold property, and on their death transmit it to alien heirs who do not reside in the state, against the provisions of the laws of the state, otherwise valid—and so the authorities already cited hold—then it certainly must be competent for the treaty-making power to stipulate that aliens residing in a state in pursuance of the treaty may labor in order that they may live and acquire property that may be so held, enjoyed, and thus transmitted to alien heirs. The former must include the latter—the principal, the incidental power."

Judge Sawyer then proceeds further to remind the citizens of California that under this same treaty the United States in 1870 joined with other nations in exacting from the Chinese

government compensation for the injuries to foreigners by the Tien-tsin riot. He then says:

"It ought to be understood by the people of California, if it is not now, that the same measure of justice and satisfaction which our government demands and receives from the Chinese emperor for injuries to our citizens, resulting from infractions of the treaty, must be meted out to the Chinese residents of California who sustain injuries resulting from infractions of the same treaty by our own citizens, or by other foreign subjects residing within our jurisdiction, and enjoying the protection of similar treaties and of our laws. And it should not be forgotten that in case of destruction of, or damage to, Chinese property by riotous or other unlawful proceedings, the City of San Francisco, like the more populous City of Tien-tsin, may be called upon to make good the loss."

It is thus apparent that no comfort can be found in decided cases for the claim that the Federal government has not power by treaty to interfere with the police power of the states.

Neither can any comfort be found for such claim in the logic of the situation.

The subject matter of the treaty-making power is unlimited in the Constitution, and hence extends to all matters which may reasonably be the subject of agreement between nations. This subject matter must of necessity include the subject-matter of police regulation. Quarantine regulations, the terms and conditions upon which persons and goods may be received at the ports of, or remain in the territory of, a country are very decidedly within the subject matter of treaty-making power, and also within the subject matter of police regulation. Being a proper subject matter of both powers, there can be no escape from the conclusion that the Federal Constitution makes such treaties "the supreme law of the land, anything [which is all inclusive; police power as well] in the constitution or laws [police regulations are laws] of any state to the contrary notwithstanding."

In each state the police power relates only to the welfare of the citizens of that state. The treaty-making power is to conserve the welfare of each and all the citizens of the entire country. The duty rests with the treaty-making power to

properly consider the welfare of all citizens in all treaties which it makes or declines to make. The welfare of citizens of a particular state may well require conservation by treaty concerning a subject matter within the scope of police regulation. The state, however, is prohibited from making any such treaty, and that power is lodged elsewhere. The reason is that as to foreign countries there are no states, there is only one nation. Otherwise we could hardly be a nation. The basic principle has never been better stated than by George Washington in his letter as President of the Constitutional Convention commending the result of their labors to the states, in which he said that it was "giving up a share of liberty to preserve the rest". Efforts of a state to disregard solemnly made treaties concerning matters ordinarily covered by treaties between sovereigns, may initiate movements, the end of which no man can foresee. Let no state assume to reclaim any share of the liberty it surrendered when joining this Union, lest it hazard all the liberty it has left.

This naturally suggests another question:—Does a national exigency permit greater power to make treaties to preserve the national existence than exists in time of peace?

We hear much of the claim that the President may preserve national existence by exercising greater powers than the constitution in terms confers. In a recent number of *Law Notes* the statements for and against such power are well contrasted by two quotations as follows:—

For, by James Madison (No. 41 *Federalist*, p. 191):—

"With what color of propriety could the force necessary for defense be limited by those who cannot limit the force of offense? If a Federal Constitution could chain the ambition or set bounds for the exertions of all other nations, then, indeed, might it prudently chain the discretion of its own government, and set bounds to the exertions for its own safety. \* \* \* The means of security can only be regulated by the means and danger of attack. They will, in fact, be ever determined by these rules, and by no others. It is in vain to oppose constitutional barriers to the impulses of self-preservation."

On the other hand, Jeremiah S. Black argued before the Supreme Court (4 *Wallace* 2):—

"You have heard much, and you will hear more, concerning the natural and inherent right of the government to defend itself without regard to law. This is fallacious. In a despotism the autocrat is unrestricted in the means he may use for the defense of his authority against the opposition of his own subjects or others; and that is what makes him a despot. But in a limited monarch the prince must confine himself to a legal defense of his government. If he goes beyond that, and commits aggressions on the rights of the people, he breaks the social compact, releases his subjects from all their obligations to him, renders himself liable to be dragged to the block or driven into exile."

The editor follows with this comment:—

"The contrast between the two points of view is clear and characteristic. One is the view of the statesman and publicist; the other that of the pure lawyer."

Permit me to dissent from the editor's view. I do not think Mr. Madison's position is the view only of a statesman or publicist but not of a lawyer; neither do I think Mr. Black's view a proper legal view.

When the constitution made the President the commander in chief of the army and navy without in any way limiting that power (except the little detail as to quartering troops), that of necessity granted to him in war time all the power a commander in chief in war time exercises under martial law. The acts of President Lincoln, sometimes claimed to have been extra constitutional, were therefore within the limits of the power granted to him. Had he failed to exercise those powers, when necessary, to preserve the union, it would have been a Buchanan-like abdication and shirking of necessary duty to the nation which elected him.

I think it is time to put a stop to this assumption that our public officials can only preserve national existence by violating our charter. That view is an unjust criticism upon the efficiency of the constitution and an unwarranted aspersion upon the character of the saviour of our country. Our organization of government is not so deficient that we have no means to preserve democracy other than by usurping autocratic power.

Does a similar grant of power to preserve the integrity of



the nation by making necessary treaties exist? If overwhelming force compels a treaty ceding certain territory as the necessary means of preserving the rest, is our government impotent to do the necessary though humiliating act? True, force may compel such compact. But is it then a compact *ultra vires* instead of *intra vires*? I suggests but do not now discuss the question.





WALTER GORDON MERRITT.

ADDRESS BY WALTER GORDON MERRITT  
ON THE SUBJECT  
"ARE THE PRESENT AIMS AND METHODS OF  
ORGANIZED LABOR CONTRARY TO PUBLIC  
POLICY — MORE PARTICULARLY FROM  
A LEGAL STANDPOINT?"

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DELIVERED JUNE 28, 1917.

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To me this is a rare opportunity. You have invited me to speak on the greatest of public problems, and I have gladly come all of the way from New York to do so. Organized labor is one of the most necessary and beneficial institutions known to democracy, commanding my entire sympathy for its legitimate work, and I hope you will not forget this during my talk, as my purpose today is to concentrate attention on some of its mistaken aims. To uncover faults is not an unfriendly act. My professional activities in labor litigation throughout the country have thoroughly satisfied me that certain of the avowed objects of organized labor, upon which it is openly and aggressively centering its activities, are opposed to the best interests of our commonwealth. In saying this, I pass over such excesses as violence, intimidation, dynamite, and other kindred crimes, for which most unions disclaim responsibility and profess disapproval. I dismiss all question as to what active duty, if any, organized labor owes society to repress such lawlessness in industrial disputes of its own engineering and, probing to the very heart of union philosophy, examine some its objectionable aims. These orthodox purposes and ambitions of organized labor of the United States constitute one of the most critical issues in this country, and it is to you, as members of our great profession as well as a part of that greater body, the American Public, that the issue must be submitted for final arbitrament.

One of the most notable tendencies of our generation has been the requirement of less ruthless methods in business rivalry, and profound changes have been made in our laws to that end. Owing to the enactment of stringent Federal Statutes a man can today embark in business with far more secur-

ity from the unjust attacks of his rivals than ever before. The Interstate Commerce Commission assures him that his goods will be carried for a fair freight or express charge, as compared with those of other shippers. The Federal Reserve Board prevents a ring of financiers from interfering with his banking. The Federal Anti-Trust laws forbid any act of coercion or oppression or any artificial arrangement to exclude him from the market, while the Federal Trade Commission, including all that the Anti-Trust law includes, crowns the whole moral and legal code by declaring that nothing unfair shall be done against him in the form of competition. These laws are in recognition of the indisputable fact that organized capital, with its great economic power, is capable of great abuses, and that both the interests of society as well as the rights of the individual, require that it be restricted. Now just as society was compelled to intervene in the struggles between employers in order to insure fair play and the protection of its own interests, so must it interfere in the struggle between employers and employees which is no longer a private conflict. We cannot abolish the labor question, but we can regulate it. In opposing such an obvious necessity and demanding exemption from all laws which restrict the oppressive use of economic power, organized labor has adopted a platform and assumed a position which militates against right and justice and the best interests of society. That is the burden of my talk.

There should be no more hesitation in resisting and rejecting the unjust demands of labor than there has been shown in rejecting the unjust demands of capital; there should be no more hesitation in extending government regulation and supervision to labor where the interests of society demand such extension, than there has been in extending such regulation and supervision to capital. Regulated capital and unregulated labor is, on its face, a contradiction. Capital and labor are both powerful special interests which, when extensively organized, have the tendency and capacity to unduly dominate our affairs and jeopardize our doctrines of equal rights and personal liberty. Through vigorous action the state has disciplined and regulated capital, and through corresponding action, the supervision and regulation of organized labor must follow. These are most obvious truths, but

at the behest of organized labor the state is actually pulling in the opposite direction.

Mr. Gompers and the American Federation of Labor are willing that capital should be regulated and restricted in the right to use its combined economic power, but they challenge any such regulation of labor and demand as a recognized social policy the right to carry on their militant work in any way they see fit as long as they do not commit a breach of the peace,—the unlimited and unqualified right to engage in strikes and boycotts, whether primary or secondary, whether in private industry or on public utilities, regardless of their injury to individual interests or public welfare. This is the battle cry of the Federation, and these rights are insisted upon though they carry the power to paralyze commerce, inflict starvation and bankruptcy. There can be no compromise, says Labor, because these are absolute rights which are eternally theirs. However much it may suffer, the state must stand on the sidelines while the industrial war goes on. Here is a challenge that society must face, and it will require much education before its momentous nature is appreciated.

It was in the latter part of 1915 that Mr. Gompers first became thoroughly aroused in his opposition to government regulation, and from that time he has been splitting with the social workers, and many sympathizers with organized labor who look more favorably upon state intervention than industrial militancy. In 1915 the State of Colorado, having just experienced a labor conflict in the coal fields that reached the dignity of civil war, determined to avoid a repetition of such a calamity by the establishment of an Industrial Commission, with power to prohibit strikes and lockout pending compulsory investigation, as in the case of the Canadian Industrial Disputes Act. In August, 1915, the Barbers' Union, of Pueblo, Col., objected because O. B. Forshey, the proprietor of a barber shop, installed an improved razor sharpening machine and advertised that he would sharpen razors for the public at prices lower than those fixed by the union by-laws. Both parties appealed to the newly-created Commission, which stated that it would not attempt to bind either side, but suggested that the union withhold action for a few days. The delay led to the barber's surrender. The sole issue was whether the public should get the benefit of this new inven-

tion, and the public lost. This incident aroused the ire of Samuel Gompers, not because the union had deprived the public of improved machinery, for his own union of cigar makers forbids the use of improved machinery; not because the union fixed the price at which the public could have razors honed and deprived the public of the more efficient service, for his own union, the cigar makers' union, fixes a minimum price at which cigars can be sold. He objected because the Commission "usurped" powers and he published an editorial and letters under the caption of "Invasion by Commission". \* \* \* "Such regulating power exercised by any political agency," he says, \* \* \* "would sap the militant spirit and the resourcefulness and independence that have made the trade union organizations of America the most powerful and most effective organizations that are to be found anywhere."

The threatened railroad strike of last summer is another example of the overreaching of this powerful class and its disregard of the rights and interests of others. Such a strike as was contemplated is literally a death-dealing blow, yet the railroad unions, supported by the American Federation of Labor, declined arbitration and declared for a general suspension, and even now they defy society to pass any law restricting their rights in this regard. They say that in all society it is not possible "to get neutral arbitrators" and that they prefer "to trust their claims to the results of economic action." Such is their political and economic power that a panic-stricken Congress rewarded their wrongdoing and punished the railroads which only demanded a fair trial and the protection of society through arbitration. But the Brotherhoods remained shameless. Even after the crisis had passed and an indignant public had expressed its disapproval, one of the Brotherhood chiefs, disturbed by the litigation which suspended the operation of the Adamson law, declared before a committee of Congress, "I wish to God that I never had recalled the strike order." Mr. Gompers, speaking for the Federation upon proposed legislation restricting strikes on public utilities, declared that "Law or no law, President or no President, such a law would not be obeyed." And so in this matter organized labor declared its program of open defiance of law and its utter disregard of the interests of

society. Under conditions such as these, is it strange that President Wilson should have felt the necessity of saying: "The business of government is to see that no other organization is as strong as itself; to see that no body or group of men, no matter what their private interest is, may come into competition with the authority of society."

In opposing regulation, it seems to me that organized labor is opposing the best interests of society. In the case of the railroads and other public utilities, long known as *quasi* public corporations, rates and service are in many instances defined and regulated by law or governmental agencies and I think it may be safely stated that such regulation has met with united public approval and has now been relegated to the shelf of those questions which are beyond discussion. Should we not, therefore, with the same finality extend the same regulation to labor? In all cases where public service corporations are regulated by governmental supervision, should not strikes be forbidden and wages and conditions of employment, in the event of disagreement, be determined by the same Commission that regulates wages? Rates and wages are interdependent and a regulated rate with an unregulated wage is an absurdity. Rates cannot equitably be adjusted for society unless wages are also controlled. The public, which requires that railway companies and their officers give continuous service, should not allow the service to be interrupted by the servants of these companies. The need of public protection and the dangers of interrupted service are greater in the case of the servants than of the masters. All these considerations and the paramount importance of public interests were recently recognized by the Supreme Court in its decision on the Adamson law, so that the power to so regulate conditions of employment on railroads has now been judicially sanctioned. There is no longer a constitutional obstacle, but there still remains the obstacle of union opposition. If the position of the Federation of labor is accepted, there can be no regulation restricting the right to strike on public utilities, and even such a mild measure as the Canadian Industrial Disputes Act, requiring investigation before declaring strikes or lockouts, will be denied the public. The ultimatum of "hands off" which the union has issued to society, cannot be allowed to prevail if public interests are to be protected.



But it is not the opposition of organized labor to a constructive program, important as it may be, which causes the most alarm, but the fact that its program of "hands off"—of unrestricted activities except as to breaches of the peace—would wipe from the slate of jurisprudence certain fundamental principles of law upon which the industrial security and prosperity of this country so largely depend. There are three labor cases—the greatest in this country—which enunciate principles of law of as great importance to society in general as our laws against theft and assault, and yet which the Federation would repeal; they constitute the very foundation of our industrial society and without them the right to work and the right to conduct business; the right to travel on railroads and to send your goods by freight and express, and the right to distribute your goods for sale throughout the channels of interstate trade and commerce, would cease to exist and would become privileges, to be exercised only by the grace of organized labor.

The first of these three great labor cases, which is the corner-stone of our industrial society, is the case of *In re Debs*, which grew out of labor troubles of nearly a quarter of a century ago. In the summer of 1894, about 100,000 railroad employes then belonging to what was known as the American Railway Union, engaged in a strike against twenty-four railroad lines centering in Chicago because they hauled cars of the Pullman Car Company, which was then involved in a strike of its employes. The activities of these railroads were paralyzed, so that even famine threatened Chicago, and the strikes soon became a vast national disturbance extending throughout the whole Middle West and Far West and causing lawlessness and disorder wherever the telegrams of the Union reached. President Cleveland promptly ordered the troops to Cleveland, but the most effective relief was awarded by the Federal Courts on application of the United States Government to enjoin the union leaders from fomenting or carrying on such a disturbance. It was the effectiveness of the injunction in this early case which has to such a large extent provoked the lasting hate and opposition of organized labor. In that very case, Mr. Justice Brewer, then speaking for the United States Supreme Court, quoted the testimony of the

defendants themselves as to the importance of the injunctive relief, wherein they said:

"It was not the soldiers that ended the strike. \* \* \*

It was simply the United States courts that ended the strike; our men were in a position that never would have been shaken under any circumstances if we had been permitted to remain upon the field among them. Once we were taken from the scene of action and restrained from sending telegrams or issuing orders or answering questions, then the minions of the corporations would be put to work. \* \* \* Our headquarters were temporarily demoralized and abandoned and we could not answer any messages. The men went back to work and the ranks were broken and the strike was broken up, \* \* \* not by the army, and not by any other power, but simply and solely by the action of the United States Courts in restraining us from discharging our duties as officers and representatives of our employees."

The Supreme Court stated that it gave to this case "the most careful and anxious attention" because it touched questions of supreme importance to the people of this country. Upon that case depended the right to injunctive relief in conflicts of this character and the right of every citizen to be carried and have his merchandise carried without discrimination by the railroads of our land. If this case had not been so decided nearly a quarter of a century ago, it might now be lawful for organized labor not only to prevent the hauling of non-union cars but to prevent the hauling of open shop merchandise to the dealer or consumer and the transportation of non-union workmen to the factory on strike. Neither can there be any doubt that if this combination to prevent the hauling of scab cars had been upheld as lawful, organized labor with this irresistible power in its hands could have overawed and ruined every manufacturer and workman who sought to resist its demands. As it is, the commerce of the Port of San Francisco was tied up about a year ago by a combination to prevent the forwarding of non-union goods and even the United States government had to obtain a permit from the union in order to pass the picket line and take possession of its minted coin.

One would have thought that the question of the right to

strike under circumstances of this character, which is an attempt to frustrate the Interstate Commerce Act itself, requiring impartial service to all shippers and passengers, would have long since been relegated to the shelf containing those questions which are settled beyond discussion. But the Federal Industrial Commission, containing three representatives of the unions, three representing the public, and three representing the employers, one of whom is a vice-president of one of the foremost railroads of this country, unanimously recommended that there should be no restriction upon the right to strike and for any and all purposes. Mr. Gompers and the Federation of Labor denounce this case without apology and demand the right to paralyze and interrupt railroad transportation of open shop articles as a means of unionizing manufacturers—his is the fanaticism and blindness of one intoxicated with power. “Upon what meat has this our Caesar fed that he has grown so great?” Upon the timidity and hesitation of a nation and our elected officials. But this country will not long tolerate that any of our transportation facilities shall be at the mercy of any group of men or that they shall attempt to dictate what products shall be transported.

The second of these three great labor cases which are the foundation of industrial security, but which the Federation of Labor would destroy, is the Danbury Hatters' case, founded on the Federal Anti-Trust law, and which resulted in a judgment of over \$252,000 against about two hundred union hatters. To legalize what is condemned in that case is to permit the secondary boycott in its most horrifying and detestable form. People discuss the boycott question in an academic way without knowledge of the size and power of the Federation and its demonstrated capacity to destroy business. An organization of two million workers, representing practically all industries, subdivided into thirty thousand local unions which are in turn united into state federations and central labor unions that marshal the entire force of organized labor in a particular state or city against any merchant or manufacturer who continues business with the boycotted employer,—this is the machine which was operated from Washington through the employment of fifteen hundred boycotting agents and many hundreds of labor papers. Such

a boycott, says Mr. Gompers, spells ruin and bankruptcy to the boycotted, and he advocated it though it starve a man to death. Before the decision in the Hatters' case, this was the principal industry of the Federation, and if the country can be taught what this really means, it will never allow this industry of destruction to be revived.

Consider the simple story of Mr. Loewe in the Hatters' case,—the law of which the Industrial Relations Commission and the American Federation of Labor would repeal,—and the iniquity of the system becomes appalling. This manufacturer from the ranks, employing about two hundred and fifty hands, is informed that he must unionize and discharge loyal non-union employes of many years standing whom the union will not receive into its membership; if he does not accede, this engine of destruction, operated principally by men who never knew him, will set its juggernaut car in motion. Being a man with whom honor is supreme, Mr. Loewe declines, and the organizers are despatched to the uttermost confines of this country to track down his goods and destroy the business of non-combatants who continue to handle them. If these customers also have manufacturing interests, strikes are threatened in their factories; if they are mere merchants, these destroyers of trade settled down in a community and employed all the power of state federations, central labor unions and the labor press to ruin their business. In duration and magnitude these subsidiary fights against customers became battles of no mean importance, creating bitterness and disturbance in many communities.

Against a wholesale customer in San Francisco, who sold retailers in several states, they marshaled the forces of the Western State Federations and Central Labor Unions and thousands of local unions. With a hundred thousand dollars available they spied upon this wholesaler's customers and followed his salesmen and his goods from Seattle to Los Angeles, spreading libelous mistatements and breathing threats of business injury wherever they went. Many a boycott was instituted against retailers in Seattle, Portland and Los Angeles because they dealt with this jobber in San Francisco, who dealt with this manufacturer in Connecticut. Why should the Federation of Labor be licensed to turn its destroyers against the neutral commerce of non-combatant

merchants? Are there no neutral rights on land? Picture such assaults against this man's neutral customers going on at the same time in different parts of the country and all directed from national headquarters. To this manufacturer, ruin was certain as death and no place in the country was remote enough to escape this organized espionage. Now Mr. Gompers wants the right to sit at Washington and, through the telegraph, telephone and the mails—the facilities used to build up trade—direct his great machine in its work of destruction. God forbid! Such a campaign to injure and interfere with others inevitably ends on Los Angeles. Again this is society's problem, for these are combinations to keep goods from the market and deprive the purchasing public of its sovereign right of choice—its right of commercial suffrage. Shall a merchant be penalized for performing the public service of carrying the goods which the public desire? This is not a combination to dissuade people not to buy Loewe hats, but a combination to prevent them so doing by keeping those hats from the public markets. No man or group or association of men should be permitted by arbitrary arrangements to control or monopolize markets or transportation after the manner of the Debs and Hatters cases. Society has already said this to capital and must now say it to labor.

The third greatest labor case is that of the Paine Lumber Company and seven other open shop manufacturers of doors, sash, and wood trim, against the Carpenters' Union and others, which was decided by the United States Supreme Court on June 11th, 1917. The perplexity into which that court was thrust by this case is shown by the fact that it was first argued in May, 1915, was subsequently restored to the docket for re-argument on motion of the court, and after being held two years, split that court into several different groups on the questions involved. The plaintiffs are open shop manufacturers located in different states, such as Wisconsin, Iowa, Tennessee and Pennsylvania, and their products are excluded from certain metropolitan communities and particularly New York City, by arrangements between the Carpenters' Union with a membership of 200,000 men, and certain local union manufacturers, whereby strikes will be called on all buildings where the competing open shop material is used. By repeated strikes the carpenter contractors and the

jobbers have been coerced into penal agreements never to handle the open shop material and all gateways to the market were thereby closed. The union manufacturers, who played the role of boycott beneficiaries, fearing to lose some of the benefits of this conspiracy, have employed spies to watch the wharves and railroad yards for the importation of the open shop material, and it is the duty of such spies to trace this material in wagon load lots to the building where it is to be used and then to notify the union to strike the job until the contract has been turned over to one of the union manufacturers. Through the effectiveness of this combination, it has become impossible to erect a large building on the Island of Manhattan except with the use of union material exclusively, and New York City, a center of trade by land and sea, has been as completely cut off from the benefits of interstate trade and competition as if it were surrounded by a fleet of hostile battle ships. A manufacturer in Brooklyn, just across the East River, who formerly had a business of over half a million dollars annually, has been deprived of his trade by this combination, so that even interborough trade in open shop products is at an end. As a result of this combination, many suits, civil and criminal, including a damage suit for \$200,000, and many injunction suits, have been instituted, and it remained for the Supreme Court to throw light on the general situation.

The case was of further supreme importance because it involved the construction of the so-called Clayton Act, which was heralded as exempting labor from the Anti-Trust laws, and forbidding the issuance of injunctions against labor in our federal courts. This law was characterized by Mr. Gompers as their Magna Charta and labor's Bill of Rights, and if it had received the interpretation claimed for it by organized labor, it would have repealed the *Hatters'* case and the *Debs* case and would have accomplished the long-sought purpose of organized labor of removing all restrictions from the exercise of its economic power. No case since the days of the *Dred Scott* decision could be of greater importance, and it is unfortunate that the court is in such widespread disagreement over the questions involved.

The decision of the court covered three principal questions: (1) The court was in general accord that the combination

violated the Sherman Anti-Trust law. Justice Pitney in the dissenting opinion says: "There has been no serious dispute about it here." (2) By five to four the court held that a private party was not entitled to an injunction under the original Anti-Trust law as it existed at the time the suit went to final judgment. The doctrine of the majority, although not accompanied with any argument or explanation, is presumably based upon the theory that the Act gives a private party the right to treble damages and the government the right to injunction, thereby impliedly denying the right of injunction to a private party. Justice Pitney, in an elaborate and powerful dissenting opinion holds that the inherent established powers of the court place upon it the right and duty to issue an injunction to protect property rights against such unlawful acts, unless the statute in compelling terms declared to the contrary. (3) The third question related to the application of the Clayton Act of October 15th, 1914, upon which there has been so much contention. Ex-President Taft and former Attorney General George W. Wickersham had held that this law exempted labor from the Anti-Trust statute, but we have consistently held to the contrary, and upon this question the majority of the Supreme Court held with us. Mr. Justice Holmes, in giving the majority opinion, declared that the Clayton Act is designed to declare a policy inconsistent with the granting of injunctions in a case of this character, but that upon this point he is in the minority. Justice Pitney in the minority opinion holds that in an equity case asking for injunctive relief only, the court should consider the law at the time the case comes up for review and that therefore the plaintiffs were entitled to an injunction under the Clayton Act which expressly gives the right to an injunction. It therefore seems clear that the majority of the court at least—and we cannot tell how great a majority—believe that a suit of this kind is now maintainable under the Clayton Act.

The effect of this decision against the contentions of labor, as soon as attention is not so entirely absorbed by the war, will be to arouse afresh the political activities of organized labor upon this point. The Federation will claim with indignation that Congress has fooled it or that the courts have unfairly cheated it, and the whole subject will be again thrown into the

political arena, creating greater political turmoil over an industrial issue than has ever been known before. Labor will again knock at the doors of congress for exemption as it has been knocking for over ten years, but with greater vehemence than ever before.

My subject would be left unfinished and the most recent and important events neglected if I did not dwell upon certain other amazing attempts to wipe out the legal rights and defenses of those who would resist the aggressions of organized labor.

President Eliot once said that the real struggle in this country would be over the question of property rights, and if he had in mind something more than tangible property, his prophecy has already come true, for we are now confronted with an organized attempt on the part of unions to confiscate certain property rights. The right to labor or operate a business, and the right to earn a livelihood, being the basic resource of human existence, the right to acquire, use and possess property is a property right around which the legal and political battle of the labor question is now raging. As long ago as 1872, Mr. Justice Bradley, in an opinion of the Supreme Court of the United States dealing with the question as to whether a certain law was unconstitutional because of the monopoly it gave to certain capitalists to operate a slaughter house, said:

"For the preservation, exercise and enjoyment of these rights, the individual citizen as a necessity must be left free to adopt such calling, profession or trade as may seem to him most conducive to that end. Without this right he cannot be a free man. This right to choose one's calling is an essential part of that liberty which it is the object of government to protect, and a calling when chosen is a man's property right. Liberty and property are not protected where these rights are arbitrarily assailed."

Since that date the many courts of our different sovereign states and the Supreme Court of the United States have repeatedly held what from sheer common sense and the immutable nature of physical facts they could not avoid holding—that the right to earn a livelihood, whether it be the right of the workman to pursue his trade or the right of an em-



ployer to operate his business, is as much a property right as the tangible dollars with which they fill their purses, and the law has accordingly proceeded to grant those rights the same measure of protection which it vouchsafes to all property rights. The result has been that labor organizations which seek to obstruct the operation of a business or interfere with the opportunities of the non-union worker, frequently find themselves restrained by injunctions and other remedies designed for the protection of property rights.

The legal protection of these inalienable rights being the fortress to which non-unionists flee for protection, the artillery of the unions is directed to its demolition because it lies athwart their path to more complete conquest. The non-union man must be made an outlaw, he must be stripped of his rights and left naked and defenseless; union men must refuse to work with him and his products must be driven from the public markets. The closed shop, that obsession of unionism, will brook no opposition.

The method of attack is to be a process of political legerdemain whereby through legislation the right to work, which from its inherent nature is a property right, will be transformed so that it is no longer a property right, and so bills have been introduced in Congress for the past decade declaring in effect that "the right to enter into relation of employer and employee or to perform and carry on business, or to do work and labor, shall not be construed as a property right, and these bills finally found expression in that much-quoted clause of the Clayton Act of October, 1914, "that the labor of a human being is not a commodity or article of commerce." Under the auspices of the American Federation of Labor, model form of bills attempting to shear these rights of their quality as property rights, have been presented in the legislatures of many different states and a systematic campaign is now being carried on for their enactment. Curiously enough, that conservative old champion of individual rights, the Commonwealth of Massachusetts, was the first state to enact such a law on July 7th, 1914. Shortly thereafter, a branch of the Industrial Workers of the World, the assailants of the courts, sought an injunction against the Hod Carriers' Union because that union had conspired to drive the members of the I. W. W. from their trade and employment by calling strikes of all

of the different building trades upon any building operation where they were employed until such time as they abandoned their union and joined the Hod Carriers' Union. Under such a regime the unions affiliated with the other trades were absolutely in control unless the law would intervene to protect the rights of others to pursue a livelihood. If the right to work were no longer a property right, as declared by the newly enacted law of that state, then the plaintiffs were helpless, but if the right to work were to be regarded as it had been regarded in the past, an injunction should issue. The court held on May 20th, 1916, that the law was unconstitutional, and said: "If a laborer must stand helpless in a court while others there receive protection" in their property rights, then the constitutional guaranty of equal protection of the laws is violated.

"The right to make contracts and to earn money by labor is at least as essential to the laborer as is any property right to other members of society. If as much protection is not given by the laws to this property, which often may be the owner's only substantial asset, as is given other kinds of property, the laborer stands on a plane inferior to that of other property owners."

This decision created an uproar in the ranks of labor. Years of persistent propaganda had gone for naught. The model bill which had been urged by organized labor in many different states, and perhaps the Clayton Act, was worthless paper. The "American Federationist" for August, 1916, speaks of the decision as the baldest usurpation, in an article entitled "Americans Wake Up!" Another whole article is devoted to the caption "What shall be done with Judges who violate the constitutional rights of labor?" and Mr. Gompers in an editorial after his own inimitable style declares that the Massachusetts Court filches the workers of their rights. When delegates of the Federation of Labor met in convention in Baltimore in November of the same year, their minds and their emotions were surcharged with this same object. The solution which presented itself was an obvious one. If the legislation was not potent enough to change the physical nature of facts, if it could not by some precious alchemy transmute that which was a property right into something which was not a property right, then we must try a stronger kind

of chemical and alter the constitution. The convention therefore went on record in favor of a constitutional amendment declaring "that the labor of a human being is not a commodity or article of commerce; and the Legislature shall not pass a law nor the courts construe any law of the state contrary to this declaration."

But the Convention did not halt here. It unanimously voted that all judges who issued injunctions of this kind should be impeached; that their orders should be defied and wholly disregarded, let the consequences be what they may. If a judge did not violate his sworn duty, he was to be impeached; if the legislature did not think it best to pass such laws and if the sovereign people of the United States did not see fit to amend their constitution, they were to be defied. Here is something to give us pause. This was no secret session. This was no action of a few mad anarchists. This was a convention of several hundred men, representing two million citizens of the more skilled and better class of workers. Organized into a permanent association, planted in the midst of our society, the like of which the world had never known before, exercising greater power for good or evil than any other private institution in the world except the church—here was this organization, publicly, deliberately and calculatingly adopting the seditious program of concerted resistance to law. Behold the most recent fruit of that persistent propaganda of hate and antagonism toward government and property rights. Again Society was defied.

These open and avowed purposes and practices aim to make the non-unionist a commercial leper and his products contraband of commerce, and are therefore contrary not only to our anti-trust laws, but also to the spirit and practice of universal service which is sweeping through the land. The country is entitled to the services and fruits of the services of all in time of peace or war, and any attempt to deprive it of these benefits is an injury to the state and an obstruction to national efficiency. When the nation needs munitions, it cannot accept the disbarment of non-union labor; when it needs shoes, it cannot stop to require the union label; and so in war we find emphasized what should be one of the most fundamental principles of the state. Now that the state and national governments are embarking on a career of industrial regula-

tion, the needs and excuse for closed shop coercion diminishes, for the state can hardly permit that those who comply with its satutory standards of fair play and decency should be driven from the industry for not maintaining some other standard.

It is the lesson of responsibility which must be taught. The unionist acting on the theory that the government is unjust or dishonest, are inclined to treat it as a foe which cannot be trusted with the interests of the workers. There is little manifestation of authority from the courts to the militia, from the police to the constabulary—there is no form of civil responsibility, from criminal prosecution to injunction and damage suits, against which they do not rebel. That is the conflict between the workers and society and it frequently overtops the private conflict with employers. This feeling and opposition must be overcome and the unionists must be taught responsibility before the law and the fact that private rights end where public wrongs begin. Labor unions are a necessity to democracy, but there may be good unions and bad unions, just as there were good trusts and bad trusts, and we must conduct the crusade against the bad union. Observance of law and the rights of others must be the price of the privilege of existence of any labor union in any community. Recognition of industrial freedom must be the price of their freedom. The institution which seeks to make a commercial leper of the non-union man must itself be made a commercial leper.

As long as any labor union persists in a policy of hostility and irresponsibility toward society in general and employers in particular, just so long and no longer are employers and business men justified in shunning and fighting that union. Who will contract with the irresponsible? Who will enter into relations of intimacy and dependence with those who can and will injure him with impunity? Irresponsible unionism is the mother of anti-unionism.

Those who uphold the present regime or seek further immunity for organized labor are the enemies of labor. It is a poor policy for the State to stand on the side lines and hold the time watch while the combatants roll up their sleeves and employ all the distressing and familiar methods known to industrial warfare. You cannot settle the labor question as

the Federation demands, and as Congress has at times dangerously inclined, by withdrawing the state and courts from the arena of industrial strife and bidding the combatants fight it out. Denying or abolishing injunctions and damage suits and sanctioning strikes and boycotts for corrupt and oppressive purposes may seem desirable to selfish and short-sighted unionists, but it is placing the power of commercial life and death in private hands, to be exercised without legal restraint, which is the very essence of tyranny. Legislation to this end is legislation for class war and not industrial peace. It is as likely to spell the end of organized labor as it is the destruction of capital. It is likely to destroy those principles of civil and industrial liberty which are more essential to the humble worker than to the employer.

We are still pulling in the wrong direction. For over a decade this question has been in the forefront and yet we have had no legislation worthy of the name looking toward the responsibility of organized labor; no legislation which would make organized labor a law-abiding institution to co-operate with employers and society. In 1914 Congress pledged itself to regulation of industry by an unprecedented onslaught of laws against capital and at the same time aimed at the exemption of labor. But let us hope that this demagoguery will pass away and that the time will yet arrive when a patient and forbearing public will require the reasonable regulation of labor.

ADDRESS BY JOHN M. WHITEHEAD  
ON THE SUBJECT  
"SHOULD THE RIGHT TO A CHANGE OF VENUE  
BECAUSE OF ALLEGED PREJUDICE OF THE  
JUDGE BE ABOLISHED OR THE STAT-  
UTES GRANTING SUCH RIGHTS BE  
AMENDED?"

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DELIVERED JUNE 28, 1917.

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In order that we start right, I ask permission to read Section 2625 of our present statutes:

Sec. 2625. (1) The court shall change the place of trial of any action or special proceeding upon the application of any party thereto, who shall file his affidavit that he has good reason to, and does believe, that he cannot have a fair trial of such action or proceeding on account of the prejudice of the judge, naming him, or in lieu of granting such application, such court may, in its discretion, retain such action or proceeding until the last day of the then current term; and in the meantime shall call or request the chairman of the board of circuit judges to call upon some other circuit judge or judges to attend and hold court during such current or next term for the purpose of exercising jurisdiction in all actions and proceedings in which applications for change of the place of trial have been made for such reason. And while so in attendance, said judge may make all orders and hear all applications and motions that may be brought on for hearing during the time he shall so attend. If such other judge or judges, (as may be necessary or convenient) can so attend and hold court for such purpose, at either such terms, the same shall be done with the same effect as if a change of venue to another circuit and a trial of such action or proceeding had been had therein but if no such judge can so attend, an order for a change of the place of trial shall be entered in each action and proceeding, wherein proper application has been made, on the last day of such term, and thereupon such change shall be made.

(2) If such application shall be made after any continu-

ance in the action or proceeding obtained by the party filing such affidavit, it shall be granted only upon payment of the costs of making the same and the costs of the term, but no costs for the attendance of witnesses shall be included if notice of the application, with a copy of such affidavit, shall have been served upon the opposite party at least ten days before the commencement of the term. But one change of the place of trial shall be granted to the same side under the provisions of this section.

(3) When the judge named in the affidavit is the presiding judge of the judicial circuit in which the case is pending, such affidavit, to be effective for any purpose, must be filed and motion thereon made, on or before the first day of the term, or of the resumed session thereof, at which the case is triable, and when the judge so named is the judge of some other circuit called in to hold the term or try the case, the affidavit, to be effective for any purpose, must be filed, and motion thereon made, on the first day such judge holds court and before any preliminary motion or other proceeding is heard by him in the case in which such affidavit shall be filed. When such affidavit names one of the judges of a circuit court consisting of branches, it must be filed and motion thereon made before the case is called for trial. The filing of such affidavit shall in no case deprive the presiding judge of the judicial circuit, or of the branch of a Circuit Court in which the case is pending, of the power and jurisdiction to hear and determine all motions then pending made by the party in whose behalf such affidavit shall have been filed. No such affidavit shall be presented, received or filed which shall contain the name or designation of more than one circuit judge.

(4) Unless any judge called in pursuant to this section shall attend and begin the trial of such action or proceeding as early as the opening of court on the second day after the action or proceeding is reached for trial in its regular order, the action or proceeding shall not be subject to be called for trial, without consent of the parties until such judge shall give to the clerk of the court five days' notice of the time when he will so attend, and such clerk shall give to the attorneys of record of all the parties to the actions and proceedings in which applications for a change of the place of trial have

been made, immediate notice of the time when such judge will so attend.

Let us see next out of what this statute has grown:

The Territorial Statutes of 1839 contain an act concerning Supreme and District Courts.

Sec. 10. No judge of any court shall sit as such in any cause to which he is a party, or in which he is interested, or in which he would be excluded from being a juror by reason of consanguinity or affinity to either of the parties; nor can any judge decide or take part in the decision of any question which shall have been argued in the court when he was not present and sitting therein as judge.

Sec. 11. No judge can practice or act as a counsellor, solicitor or attorney in the court of which he is a judge, except in those suits in which he shall be a party, or in the subject matter of which he shall be interested.

Sec. 12. No judge shall have any partner practising in the court of which he is a judge, nor shall any judge be directly or indirectly interested in the costs of any suit that shall be brought in the court of which he is judge, except those suits in which he shall be a party, or be interested as above provided.

Sec.13. No judge of any court of record shall hold any other office under the laws of this territory while acting as such judge.

The next law on the subject is Chapter 21, Laws of 1840:

Sec. 10. If either party in any civil cause, in law or equity, which may be pending in any District Court in this Territory, shall fear that he will not receive a fair trial in the county, in which such cause is pending, on account that the judge is interested or prejudiced, or is related to, or shall have been of counsel for either party, or that the adverse party has an undue influence over the minds of the inhabitants of the county, where the action is pending, or that the inhabitants of such county are prejudiced against the applicant, or that a large number of the inhabitants of such county have an interest in the question involved in said suit adverse to the applicant so that he cannot expect a fair trial, such party may apply to the court, in term time, or to any judge, in vacation, by petition, setting forth the cause of the application, and praying a change of venue, accompanied by an



affidavit verifying the facts in the petition stated, and such court or judge, reasonable notice of the application having been given to the opposite party, or his attorney, shall, if satisfied of the truth of the allegations award a change of venue, to some county where the causes complained of do not exist, and in all cases, where the judge is interested or is related to or has been of counsel for either party, the court, in term time, may award a change of venue, as aforesaid, in their discretion, without any application from either party.

Sec. 11. Whenever the court shall change the venue in any cause or matter, as aforesaid, it shall be the duty of the clerk of the court, forthwith, to transmit all papers on file, in his office relating to the said cause or matter to the office of the clerk of the court for the county in which such cause may be ordered to be tried, and the District Court of the county, to which said cause or matter shall be sent for trial, shall proceed to trial, in the same manner, and to give judgment and award executions, as though the said cause had not been removed.

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Sections 1, 2 and 3 of Chapter 95, Laws of 1849, are the same.

This was evidently a well-considered piece of legislation and for its origin I turned to the statutes of the states from which I thought it most likely to have been derived—Michigan, New York or Massachusetts, but I found nothing in any of the laws of any of these states that afforded even a suggestion as to the source of the statute; but I found, finally, an ancient statute of Illinois (1833) substantially the same as that of Wisconsin of 1840.

My interest then centered upon the present practice of Illinois, to see how far that state had adhered to its original method, and whether we were still traveling on parallel lines.

I found in Courtright's Illinois Statutes.

#### CHAPTER 171.

1. Causes for Change. That a change of venue in any civil suit or proceeding in law or equity, including proceedings for the right of eminent domain, may be had in any of the following cases:

First—Where the judge is a party or interested in the suit, or his testimony is material to either of the parties to the suit, or he is related to, or shall have been counsel for either party in regard to the matter in controversy. In any such case a change may be awarded by the court in term time, with or without the application of either party.

Second—Where either party shall fear that he will not receive a fair trial in the court in which the suit or proceeding is pending, because the inhabitants of the county are or the judge is prejudiced against him, or the adverse party has an undue influence over the minds of the inhabitants. In any such case the venue shall not be changed except upon application, as hereinafter provided, or by consent of the parties.

A change of venue is granted to some other court of record, of competent jurisdiction, of the same or some other convenient county, to which there is no valid objection. In Cook County, where the only causes for the change of venue apply to one or more of the judges, but not to all, the case may be sent to a judge of the court of the county, to which the cause does not apply.

All changes must be based upon petition, verified by the applicant, setting forth the cause of the application. The application may be made in term time, or to the judge in vacation, upon reasonable notice to the adverse party or to his attorney.

No application for a change shall be allowed after the first term, unless the party applying give ten (10) days notice of the application to the opposite party, except where the causes have arisen or come to the knowledge of the applicant within less than ten days of the making of the application.

No change of venue shall be granted after the first term of the court at which the party applying might have been heard, unless he can show that the causes for which the change is asked have arisen or come to his knowledge since the term at which the application might have been made.

Neither party shall have more than one change of venue, and where there are several parties, defendants or plaintiffs, a change shall not be granted to another plaintiff or defendant unless with the consent of his co-plaintiffs or co-defendants. An exception is noted, however, with reference to con-

demnation proceedings, which it is not material to consider further.

When a change of venue is granted in vacation, the judge granting it shall immediately transmit the petition and affidavits and his order to the clerk of the court in which the case is pending. A change may be ordered, upon such equitable terms or conditions as the judge in his discretion may prescribe.

The clerk shall immediately transmit all papers to the court to which the change has been granted.

There is a special provision, somewhat elaborate, in the Illinois Statutes, for a change of venue in criminal cases, for the prejudice of the judge or the prejudice of the inhabitants of the county, in which the indictment is pending. The case may be sent to a court of the same county or some convenient county to which there is no valid objection. But in Cook County, the cause for a change is held to apply only to the judge holding court at the time of the trial.

The application is made up similarly to that made up in a civil case. When the cause for a change is the alleged prejudice of the judge or any two of the judges, the petition shall be accompanied by the affidavits of at least two reputable persons, residents of the county, not of kin or of counsel to the applicant, stating that they believe the judge, or any two of them, to be so prejudiced against the applicant that he cannot have a fair and impartial trial. Thereupon the case may be tried by any other of the circuit judges of the circuit in which the case is pending, and the venue shall not be changed from the county in which the indictment is found.

Application may be made to the court, or to the judge in vacation, reasonable notice having been given to the state's attorney.

No application for a change shall be made after the first term, unless the applicant give the state's attorney at least ten (10) days notice of his intention to make such application, except when the causes have arisen or come to the knowledge of the applicant within less than ten days of the making of the application, and no change shall be granted after the first term at which the applicant might have been heard, unless he shall show that the causes have arisen or come to his knowledge since the term at which application might have been made.

No single defendant shall have more than one change of venue.

All papers are to be transmitted to the court where the trial is to be had and the prisoner placed in the custody of the county in which the court is to sit.

The systems of Wisconsin and Illinois are practically the same and as I feel and am informed, working as well as any that is in force anywhere.

I might weary you were I to follow in detail the numerous steps taken by our legislature in bringing us to the present practice. Our subject calls rather for an examination of the working of our law. So to be practical, I concluded to sound my brethren of the Rock County Bar, as to their opinions of the statute. To this end I addressed a letter to each one of our lawyers in active practice and obtained an answer in almost every case. From these letters I shall read brief extracts, to indicate the drift of thought on this question in our county.

A lawyer whose practice has been mainly in another jurisdiction writes:

"The present law governing change of venue is all that such a law need be, but there should be a law to govern the practice of attorneys in applying that law. Too many lawyers forget that they are a part of the court and that their duty consists of directing the course of a trial to the end that exact justice may be done, and that when they have done that their duty is ended—in their eagerness to win the case for their client, and the fee for themselves.

A judge who takes jurisdiction of an action knowing himself to be prejudiced, or whose actions and attitude during the trial are such as to fairly justify the belief that he is prejudiced, ought to be removed from office and required to pay the entire costs of the case, and a new trial granted, and the burden of proof should be upon the judge. A party who loses through the evident prejudice of the judge should not be put to the expense of proving that which is clear to every man. Judges should be granted great liberty of action, but license never, and a palpable error should be held to be prejudicial on the part of the judge, and punishable as above indicated, and not passed over (always at the expense of someone) as a mis-

take of judgment and a new trial granted (generally at the expense of the public.)

It is probable that what I have written will not be of value to you, but it indicates a disposition to help, and I will excuse myself by saying that there are a few "practices" that I believe ought to be changed, if law and lawyers are to command respect, and the practice of making false affidavits for change of venue is one of them."

A member of the Bar who did not write a letter spoke to me about the matter and in the course of his conversation said that if he were to suggest an amendment, it would be that counsel should join with the client in making the affidavit upon which the change is applied for. In other words, the responsibility for possible perjury should not rest wholly upon the client, who would plead that he had acted under advice of counsel, but should also be shouldered by the counsel himself.

He felt that such a provision would deter any lawyer of easy conscience from leading his client into making an untrue affidavit, as a basis for his application.

An attorney of some 35 years practice, writes:

"I should be vigorously opposed to the repeal and abolishment of the present statute giving such right to a litigant (Chapter 119). I am thoroughly convinced of the wisdom and justice of the present act, and while an amendment seems to me desirable, I readily perceive the difficulty involved in drafting an act that would be feasible and satisfactory. Neither can I justify the motive which suggests an abolishment of the right to change of venue, under any circumstances."

"The historical account of the establishment and power of the court of Star Chamber in the reign of Henry Seventh—its vast power over life and property; its gross abuses and maladministration of justice would be good Sunday reading for those freshmen attorneys, who would needlessly pull down and destroy a system of practice and established procedure—which is by no means perfect—is believed to have been an improvement on the old common law in many instances at least, and which has required the labor and thought of at least two generations of lawyers and law reformers to bring to its present standard. On the whole, I do not think we should tamper or tinker with the statute changing the venue. It has

stood long in this state, and so far as I can observe no one has grievously suffered by reason of its use and application."

An attorney of general practice for many years, writes:

"I do not recall ever having applied for a change of venue. As you know, none of the attorneys in this circuit have been in the habit of making such applications. I do not recall any instances of change of venue since Judge Dunwiddie was on the bench. You remember that when Judge Bennett was on the bench there were quite a few."

An attorney with a large clientage, writes:

"A statute which should remain in force as it is now written, so that if it should become necessary under the circumstances contemplated by the legislature to try a case before some other judge, the people will have the right so to do.

This statute has been used so little in this circuit in recent years that it has practically become obsolete, and I presume that the same situation prevails in the other circuits of this state.

Regarding the wisdom of amending the statute, I would say of this statute, as well as of some others, that the wisdom is lame instead of the statute. We are amending too many statutes in my judgment, thereby rendering it impossible for us to settle for any definite period of time a large amount of our legislation, and I do not think that the administration of justice would be at all improved by an amendment.

"My judgment is that it will serve no good purpose in legal procedure to disturb the statute as it is now written."

A younger member of our Bar writes:

"I would not deem it advisable to abolish the statute granting right to the change of venue, but if a proper amendment could be worked out, it might be possible to overcome the present difficulties by making it discretionary with the judge."

A vigorous firm writes for the individual members whom I addressed:

"I would not be in favor of abolishing the law, but if I were to amend it, I would add other grounds upon which to predicate a change, because I believe that any litigant ought to have the right to have at least one change of venue if he desires it, for most any cause, or possibly without showing any cause. I do not think he should be put to the necessity

of perjuring himself by swearing that the court is prejudiced, when he really wants a change for some other reason.

"My experience is, however, that there are often local prejudices and reasons why a litigant should want a change of venue, and I think it is entirely proper that he should have one; and while it is perhaps true that the judge of a court is oftentimes not as prejudiced as litigants think he may be, still, to shut down on the practice of allowing a change of venue would be to make judges even more arrogant and independent than they sometimes are, which, to my notion, would be quite useless and unnecessary. I sometimes wish we might get a change of venue from the Supreme Court."

A prominent attorney writes:

"I have had nothing that has caused me to form any definite opinion upon the points raised in your letter. I do not feel that I can make a statement, either way, with reference to this matter."

Another attorney says:

"I think the statute is necessary. It is of course sometimes abused, but that happens with most good laws. I cannot suggest any amendments."

Another opinion, from a lawyer of much experience, is as follows:

"My experience with this statute has been very limited. I do not now recall of ever having filed an affidavit of prejudice. In our Circuit Court, for well known reasons, applications for a change of venue are rare indeed. There certainly is no abuse of the statute in that court. So far as I know, during my practice in Janesville, no case has been sent out of the county on an application of that kind, and in the last ten years, a judge from another circuit has been called in not to exceed a half dozen cases—and in some of those for reasons other than a requested change of venue. In our municipal court, a change of venue, although more frequent, is yet comparatively rare, and I have sometimes heard it said that the application was made for delay, but this statement, however, has usually come from the attorney resisting the application for a change.

"I assume from the fact that the question is up for discussion that in some parts of the state the right conferred by this statute is abused. As experience is the best teacher, those

practicing where the abuse exists should be best able to suggest relief. I think I can say, however, that I am quite clear in my opinion that this statute should not be abolished. Any lawyer can easily see that a case can arise at any time, making an application for a change of venue on account of the prejudices of the judge not only advisable, but quite necessary and important. When such a case arises, the absolute right to have the change should exist. The reasons for this are so easily apparent to every lawyer that they do not need elaboration and any number of supposed cases can easily be imagined.

Whether or not the statute should and can be amended so as to provide safeguard against the exercise of the right for delay and annoyance only is a matter upon which my experience and thought would hardly permit the venture of an opinion. The attorney is many times responsible for the client's affidavit and it may be properly so. It may be that the party's affidavit should be supported by an affidavit of the attorney, stating that he has gone over the matter fully with his client and that in his judgment the application for a change is meritorious and not for delay; and yet I think it can be said with good reason that the easy exercise of an undoubted right is far more important than the occasional abuse in the exercise of that right. So far as I know, the abuse consists in the fact that an application for a change of venue is sometimes made for delay only. It may be that all such abuse can be taken care of by an arrangement for the prompt calling in of another judge—say in cases in the municipal court, another municipal judge or the county judge of the county—and that thereby the delay obtained by a change of venue be so shortened as to make a request made for the purpose of delay only, of almost no value.

"I am satisfied that the statute is a good one and that any amendment of it should be well calculated to cure abuses only and not to substantially interfere with the easy exercise of a well-established, important and undoubted legal right."

A lawyer of wide and full practice writes:

"The statute in question might bear some slight alterations, although I think it is very satisfactory as it is, but certainly it ought not to be abolished. Judges are human and are subject to all of the same causes for prejudice and bias as the rest of the human family. Their position and training may help



to a considerable extent to do away with the effect of such bias or prejudice, but it cannot do away with all of it, and the grossest kind of injustice might be perpetrated if a litigant had no way to get away from the biased or prejudiced judge.

"The right to strike a limited number of jurors is, I believe, universal in the United States, and certainly some method should be left open to object to a particular judge.

"Bitter complaint is sometimes made because certain judges have near relatives practicing in their own courts and I have seen cases where parties were fully justified in removing a case upon this ground alone. There are phases of litigation which particular judges ought not to try on account of their bias. The judges to whom I refer may be wholly unconscious of this bias. Where our Supreme Court adopts the rule that the finding of a trial judge will be sustained unless it is clearly contrary to the testimony, litigants should have the right to have the case tried before some absolutely impartial judge. If a change of venue were not permitted, very grave injustice might be done in important litigation. I presume this statute is abused some, although under the present practice of calling in a judge instead of sending the case out of the County, there cannot be much abuse of the statute. If there is some abuse, it does no particular harm because the litigation is still before an impartial tribunal.

"I think there are all kinds of reasons why this statute should not be abolished and I do not know of any good reason why it should be abolished. Judges are no more free from prejudice than the rest of us, and I think that the abolishment of the statute is a long step backward. I do not think the statute ought to be amended so as to make it any more difficult to procure another judge before whom to try a case, than under the present statute. Some amendments might be made to facilitate the getting of the other judge, but there should be no substantial change in our present statute. The affidavit of a litigant to the effect that he believes that he cannot have a fair trial before a particular judge, should be sufficient to change the venue and procure him another judge.

"In over 33 years of practice I do not now recall of ever having filed an affidavit of prejudice, but I certainly believe it to be an essential right in the administration of justice."

An attorney for well-to-do clients and corporations says:

"I believe that the right to a change of venue, on account of the prejudice of the judge, should not be abolished. I have no doubt that the statute granting the right has been abused in some courts, but not in any of the courts located in this city.

"I believe that our courts should be vested with every power to conduct their businesses, but I do not believe that it would add anything to the administration of justice to leave the question of a judge's fitness to decide a case, entirely to his determination. We know that every person has preconceived opinions concerning men and subjects under discussion, and that judges, being human, have the same convictions after their elevation to the bench that they had when practicing at the bar. Our statutes provide for the removal of a juror, on account of bias or prejudice in the cause, and for the same reason, why should not the presiding judge? Of course, no fair-minded judge would care to decide any case where one of the parties believes that he is prejudiced, but what assurance have we that our judges would not abuse the right, if the statute were abolished? The fact that this statute is seldom taken advantage of in this city speaks well for our bench and bar, and suggests that in courts where it is claimed that the statute has been abused, that perhaps the fault is with the judge as much as with the attorneys. No person ought to be compelled to submit his case to a judge, whom he believes is prejudiced against him personally, or against his case, and particularly in cases tried without a jury, where the findings of the trial judge are almost conclusive on appeal.

"My experience under the present statute is limited to the courts of this county almost entirely, and as I do not know of any instance in recent years where the statute has been abused, I know of no amendment that would be of any value."

One of the members of the bar who tries many cases writes:

"My answer as to the abolition of that statute will be emphatically No. My reason for such an answer is this: While the danger of an injustice being done on account of a judge's prejudice is very small in our state yet there are a good many people who are unable to conceive that all of our justices desire to be absolutely fair, and in order to have these unthinking persons perfectly satisfied with our courts, it is best that when they believe prejudice to exist, whether this prejudice

be actual on the part of the judge or imaginary on the part of the litigant, that full opportunity may be had to remove the case to some court where they think prejudice does not exist. The respect of these unthinking people for our courts will be increased and my belief is that it would be very unwise to change the statute. We want the wise and the ignorant (especially the ignorant) to have full faith in the integrity of our courts and to know that there is no chance for them receiving anything but just treatment in them.

"Now, whether the prejudice is actual or imaginary, there is no difference in the want of respect for a government that requires me to have my case tried before a prejudiced judge, or one thought to be so.

"The right given under the statute is sometimes, perhaps often, abused, but the best things on earth are often put to a bad use. The statute is good enough as it is."

A prominent member of our bar writes:

"I am constrained to answer your question in the negative. And though I answer it in the negative, I think there is much less prejudice from year to year than formerly. I think also that litigants (and counsel) do not now nearly so often imagine, or pretend, that the presiding judge is prejudiced, as formerly. This improved condition arises from the fact that there is less prejudice, and from the further fact that people generally take a broader view of men and of conditions.

"I have little doubt that the records would show that young attorneys file a large proportion of the affidavits of prejudice for their clients. That is but natural. They yield more easily to a suggestion of a client. They have not in many cases the broader vision. They more easily think that a judge is prejudiced against their cases, and sometimes they are prejudiced against the judge, and, as by a contagion, from them the client becomes prejudiced. And of course, if client or attorney is prejudiced against the judge, it follows in their mind that the judge must be prejudiced against the litigant.

"After all is said, however, does much evil flow from the present statute, or injury or loss occasioned to litigants or the public? I think not. On the other hand, as a reason for retaining the statute in question, or some one of like force, I firmly believe there are some judges sometimes prejudiced against some men who happen to be litigants or who may be.

You say that that is natural, that is human nature; and that judges ought to be prejudiced against some men. I admit that; but no judge ought to be prejudiced against any litigant's case. I don't think a judge so prejudiced against a man can wholly disassociate prejudice against the man from the cause.

"It would be injustice for a prejudiced judge to sit in any cause, and no injustice should be done to any man."

One of our most active trial lawyers writes:

"That statute is one of the safeguards to the right that every citizen shall have a fair and impartial trial. It is a substantial right, a substantial safeguard to the rights of person and property. Circuit judges are not immune from the prejudices of all mankind. They are not infallible and the litigant's right either in a criminal action involving his liberty, or in a civil action, involving his property, to have a trial before a judge that is fair and impartial is to my mind as sacred and entitled to as much protection as is his right to a trial at all, and I would not permit any change of the statute which would in any way abridge or interfere with that right.

"In making this statement, I am well aware that there are instances too numerous where attorneys (not of the better class) use this statute for purposes of delay and annoyance. There are instances also where certain attorneys have used this statute because of some personal feeling that they themselves have against the presiding judge of the particular circuit.

"The fact that here and there there is an abuse of a good law is no reason why the rights secured by the law should be in any way abridged. The principle sought to be safeguarded by the right to change of venue is too important to be taken away or abridged because here and there some bad men abuse the right. No good law can be tested by its abuse by either the vicious or ignorant.

"It has been my experience from a good many years in active practice in the trial of lawsuits that in the main the statute is not abused and I have known of many instances where if such a right did not exist a great injustice would in all probability have been perpetrated.

"It has not been infrequent experience after a change of venue has been taken from a circuit judge, to hear him say

that 'I am glad the case is removed,' or 'I am glad that the affidavit is filed. While I do not know the parties, I have a feeling and bias in that kind of an action.' And the same judge, except to an intimate friend, would not have had the strength or independence, or thought it proper for him to go to the attorney on either side of the action and tell him his views, except in rare cases, for the reason that either he would have been misunderstood or his statement garbled and misconstrued. In the great majority of the cases the trial lawyer is a fair and upright practitioner, and he dislikes to present such affidavits, sometimes from my own experience he fails to present them when he should.

"It is no reflection on the honor and integrity of a judge, and a broad-minded, high-class judge, will not so feel it, to file an affidavit that he is prejudiced in a given case (assuming the affidavit is filed honestly, with an honest and sincere purpose, as it usually is.) And the judge who feels hurt or injured by an affidavit filed by the average practitioner has a wrong view, either of his rights and duties or the rights and duties of the attorney.

"The attorney who is in the habit of filing these papers promiscuously rarely, if ever, has very much practice. He does not cut much of a figure, and what he does wrongfully and improperly should not in any way be used to act against the substantial right of the honorable attorney and honest litigant.

"We are wonderfully fortunate in this state in having on the bench a very high-grade lot of men as circuit judges and the percentage of change of venue of affidavits filed by reputable attorneys is so small as to indicate that the right is one exercised when it should be, and if the judges were not human in now and then having a prejudice, they would not be as fit to sit upon the bench as they are."

An attorney whose position is suggested by his words, writes:

"My experience has been confined almost entirely to criminal cases. In such cases I have never known of an affidavit requesting a change of venue to be filed for the purpose of delay or for any improper purpose.

"I can recall instances where an affidavit was filed asking for a change of venue in a criminal case where the defendant

honestly felt that the magistrate before whom the action was commenced was prejudiced against him, though as a matter of fact there was no such prejudice. In such a case it seems to me that it is better to allow the defendant to have a change of venue, even though he may be mistaken in his judgment that the magistrate is prejudiced, than to force him to an examination or trial before such magistrate, for the reason that he will feel that he has a justifiable criticism to make against the fairness of the criminal courts. In my judgment, it is better to allow a defendant in a criminal case to have the privilege of taking his case before another magistrate if he so desires, and thus remove any possible chance of his being able to find any apparently justified fault with the criminal procedure, than to take such privilege away from him, or to limit it in any way, for the reason that the possibilities of abusing the privilege are much less than the apparently justified criticism which might be made if the privilege should be denied or limited.

"You will understand that in case an affidavit of prejudice is filed before a justice of the peace, sitting as an examining magistrate or a trial judge in a criminal case, that the action is simply transferred to the next nearest justice of the peace, which in this county means practically no delay in the disposition of the case. In case an affidavit of prejudice is filed in the municipal court in this city, the action is simply transferred to the circuit court, which does not impose any additional expense on either the state or the defendant. Or the judge of the Janesville court may call the circuit judge or the county judge to hold court for him. In case an affidavit of prejudice is filed in the Beloit municipal court, the judge may call in the judge of the Janesville municipal court. In none of the criminal cases which arise in this county does an affidavit of prejudice impose any unreasonable expense upon any of the parties, nor has a change of venue in any criminal case that has come within my knowledge cause such a delay as to outweigh the gain secured by removing from the mind of the defendant any feeling that he was compelled to try his case before a judge whom he thought was prejudiced against him."

Another brother says:

"I do not think that the right to a change of venue, be-

cause of alleged prejudice of the judge, should be abolished, because, although affidavits are frequently filed when the judge was not, in fact, prejudiced, yet public policy would demand that a litigant should not be required to submit his case before a judge whom he believes to be prejudiced, even though erroneously. Since, if the decision should be adverse to himself, he would always have a feeling that the courts are biased or corrupt. The prevention of this feeling is worth taking the chance of an occasional abuse of this privilege of a change of venue. I do not recall filing such a petition for a client more than twice, and each instance the client insisted on and would probably have felt aggrieved had the motion for change of venue not been granted, although, in each instance, I believe, he would have been at least as well off, had he been satisfied to forego his privilege of change of venue."

A member of the bar in one of our smaller cities writes:

"I should say that such a right should be maintained and granted as fully as is now granted under our present statute. Under no circumstances should this right be fully abolished. As to any amendment of our present statute, I do not know as I can suggest anything. My idea is that the statute should give to the parties the full right to a change of venue, upon the ground of fear of not getting a fair trial.

"Your letter relates to circuit court practice, but is about the same as in justice court, and I have found that in many cases it is impossible to get anything like a fair deal in a justice court. While I think circuit judges are more inclined to be fair than a justice court, yet human nature somehow crops out when least expected."

One of our judges has this to say:

"My opinion upon my somewhat limited experience under this section is, that a certain class of attorneys take advantage of this section to secure a delay in bringing litigation on for trial, rather than for any real, substantial prejudice of the presiding judge.

"In several cases in which change of venue has been asked for on account of prejudice, I did not even know the parties signing the affidavit, and I am satisfied in several instances the change was asked for because the attorney who appeared in the matter entertained some fancied or real reason as to why he did not wish his client tried in this court, rather than

the client knew of any existing prejudice that the court entertained against him.

"In my opinion, this section should so be amended that it would require the parties seeking the change to give some reasonable proof of the prejudice of the presiding judge before change is granted, which amendment would save time, attorney's fees, as well as court expenses by limiting trial of action to a less number of days than if the change was granted."

Another judge offers the following:

"While in the past there may have been abuses under the statute, and applications made simply for the purpose of delay, it seems to me that there is very little of that at present. To take away the right entirely might work a greater injustice. It seems to me that our statutes of procedure and also our statutes of rights ought to be let alone, unless there is a very crying need for their amendment."

Mr. President, you will discover a striking similarity of view expressed by these lawyers, who are hard at work all the time in their clients' interests, and their views are presented as showing the public opinion of the Rock County Bar on this important question.

I am in accord with the general trend of opinion. Personally, I have never applied for a change of venue, nor have I ever had a change taken in any action in which I was of counsel, except in two cases, in both of which Judge Bennett had figured as counsel or witness, so that of his own accord he sent the case away from himself for trial.

I think the law as we have it has been developed by experience and is a well-balanced procedure. I should not like to have it materially altered.



DISCUSSION OF MR. WHITEHEAD'S ADDRESS.  
BY C. E. BROSSARD.

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MR. BROSSARD: I will occupy your time but a few moments. I speak with diffidence at this time, first, because I am but little acquainted with the question I am to discuss and second, because of the magnificent and splendid address to which you have listened for something like an hour and twenty minutes from Mr. Merritt of New York. I am indeed reluctant to furnish an anti-climax.

The question is important in direct proportion to the extent to which the right is abused. Should the right to a change of venue because of the alleged prejudice of the judge be abolished, or the statute granting such rights be amended? That is the double-barreled question in hand, and I choose to fire the second barrel first.

The statute should be amended. It ought to require the applicant for a change to state the very particular good grounds on which he has based his belief that the judge is prejudiced. There might be some embarrassment in stating those grounds, but I think what there would be of embarrassment would be generally on the part of the person who undertook to state the reasons why he believed the change was necessary, and that embarrassment would usually be so great that it would deter the affiant from presenting his affidavit to the Court. There might possibly be embarrassment on the part of the court when the grounds for belief that he was prejudiced were stated, but as our courts are now constituted, there is little likelihood that they would be embarrassed in this matter. Of course in a case like some of those recorded in the trial of George Hubbell, if the grounds were stated, it should embarrass the judge, but if, unfortunately, such a condition existed, it ought to become known.

As before stated, this absolute right of change is known principally by the abuse of it, and one reason why it is abused is because it can be with impunity. Although theoretically a man might be convicted of perjury for swearing falsely in this matter where the grounds of prejudice are not stated, yet practically he may do it with impunity. No case is reported

where a prosecution was even attempted. If the reasons for the belief were stated and they were false, it would be possible to convict of perjury and probably no affidavits of prejudice would be filed if that requirement existed.

This abused right of a change of venue for prejudice of a judge was first introduced in our jurisprudence in 1853. The act required that the grounds of belief be stated in a verified petition. The provision did not long remain in the statute, but I think it should have been a fixture there.

The importance of the question under discussion has been very much diminished by the addition to our statute of the provision for calling in another judge in place of sending the action out for trial. There were three main reasons I think before that amendment was made, why affidavits of prejudice were filed. First, for the purpose of delay; second, to get into some other community, and third, because the lawyer who filed it was angry at the court and desired to express his contempt in a way that would not subject him to punishment. Some of you may have known an attorney in that frame of mind and representing numerous parties in causes on the calendar to file affidavits wholesale in all of his cases. Undoubtedly there was prejudice but it was in the mind of the attorney, rather than that of the court, and this prejudice was communicated by the attorney to his clients with the suggestion or direction to swear the cases away. At any rate, these numerous parties in some way discovered, suddenly and unexpectedly that the judge whom they had always highly esteemed was so prejudiced that he would not administer justice impartially in their cases.

Such an act furnishes some argument in support of the position taken by one of the attorneys of Rock County, to the effect that the affidavit of prejudice ought to be made by the attorney and not the party,—if made at all.

The right to a change on account of prejudice ought to rest in the discretion of the judge, the same as does the right of a change for other causes. Of course, to leave it to the discretion of the Court is open to strong objections. The judge who is in fact prejudiced and realizes it, does not need an affidavit of prejudice as a condition of changing the venue, and if the judge is prejudiced and wishes to retain the case, he would likely exercise his discretion by hanging onto it;

and the judge who is prejudiced and doesn't know that he is prejudiced, of course is very certain that he is not and his discretion would be likely exercised against a change. However, this right is made discretionary by statute in several states. I think not more than four or five states give the absolute right of change of venue on alleged prejudice of the judge. I believe the federal courts do not know such a right and most of the states do not. Those that do have it in varied forms.

You may be interested in considering for a moment a complete and up-to-date statutory machine for handling this matter. I refer to the statute of Iowa. "If either party files an affidavit verified by himself and three disinterested persons not related to the party making the motion nearer than the fourth degree nor standing in the relation of servant, agent or employe of such party, stating that the inhabitants of the county or the judge is so prejudiced against him \* \* \* \* that he cannot obtain a fair trial; and when either party files such an affidavit the other party shall have a reasonable time in which to prepare and file counter affidavits and the court or judge in his discretion may cause the affiants upon either side to be brought into court for examination upon the matters contained in their affidavits, and when fully advised shall allow or refuse the change, according to the very right and merits of the matter. Not more than *two* such changes to either party shall be allowed."

This statute furnishes a splendid chance for a collateral law suit. I imagine that when a hotly contested issue of this character was fought out, especially if it involved the question of prejudice on the part of the judge, no matter what his mental attitude was at the beginning, he would surely be prejudiced in the end. By the time the petitioner and his witnesses had been examined in chief and cross examined by the other party, and the other party and his witnesses had testified and been cross examined and all of them had been put through the third degree by the judge, the original law suit would have dwindled in importance and might be wholly forgotten.

The statute in question ought to be amended in another particular. It should provide that every *party*, using the word in the sense of one who has divergent or conflicting

interests, should have the right to the change of venue. The statute says that a party to the suit may obtain a change of venue on filing an affidavit of prejudice. The courts, however, have held that the word "party" does not apply to individual plaintiffs or individual defendants, but to all of the plaintiffs or defendants collectively, and that they must all join or that there can be no change. The only exception to this rule is that nominal parties may be disregarded.

Another statute says that either party to a litigation may have a certain number of challenges. The courts have construed this statute to mean that every distinct or separate interest, whether represented by one or more individuals, shall be entitled to that number of challenges, so that the defendants who have adverse or conflicting interests have separate rights of challenge of jurors.

Why the word "party" should be given a restrictive meaning in one statute and an extended one in the other, is not plain to my mind, but such has been the construction.

One reason given for restricting the meaning in the change of venue statute was that to grant the change would compel the case being sent away for trial, and that if practically all of the defendants were satisfied with trying the case in the court where it was, and others wished it changed, that the former had as good a right to their way as the latter, and that no change should be made. The force of this reason has very much disappeared since the practice of calling in a judge has obtained.

Now as to the second barrel of the question. After getting the statute amended, it ought to be repealed; the absolute right to a change of venue should not exist.

I base that statement upon this ground: Those who practice law frankly, candidly and honestly should be put at least upon a par with those who use deceit and deception in the conduct of cases. No one doubts that most of the affidavits of prejudice that he has seen were filed for ulterior motives, rather than because there was an honest belief of prejudice on the part of the judge. A lawyer who practices law honestly cannot advise his client to make an affidavit of prejudice for the purpose of delay or for getting into some other county, or to get before some judge whose views of the law or whose attitude on some matter involved is more to the liking of the

attorney. A lawyer who practices honestly and who cannot resort to such means is handicapped under this present statute when he has for an opponent a person who will abuse the right to a change of venue on account of prejudice. There may be hardship now and then result from being brought before a judge who is prejudiced, and whose prejudice will be given sway, but such a case would certainly be very exceptional and when it did arise, the one who suffered would simply be paying one of the penalties which are assumed by membership in society.

On the other hand, the abrogation of the right would prevent a frequent abuse, and on the whole society would be better if this right did not exist.

Frequently affidavits of prejudice are made in case not because a judge is prejudiced against the individual, but because the judge has a wrong opinion on some subject of law that is involved. The attorney dislikes the judge's attitude toward matters involved, or the judge's opinion of the law of the case is unsatisfactory. The case of *Goodno vs. Oshkosh* will serve to illustrate this point. It is reported in the 24th, 28th and 31st Wisconsin Reports.

Goodno sued the city on account of injuries suffered on the streets of Oshkosh. She appealed to the Supreme Court from an order setting aside the verdict and granting a new trial. The Supreme Court affirmed the order. When the case returned to the Winnebago Circuit Court, the plaintiff's attorney filed an affidavit of prejudice. The prejudice had been discovered after the case was once tried. The action went to Fond du Lac County, where it was appealed to the Supreme Court by the defendant from the judgment for five thousand dollars damages, and then it was reversed on the grounds that the verdict was excessive. When the case got back to Fond du Lac County, the city's attorney filed an affidavit of prejudice and applied for a change of venue. The application was denied and the case was again started on its journey to the Supreme Court. That court reversed the ruling of the Circuit Court and remanded the case to the lower court. We are not advised as to the subsequent history of the case.

Looking at it from this distance, it seems that the affidavits of prejudice, in that case, were really filed because of the

opinions, rather than the prejudice, of the judges. Now our Supreme Court has held that the known, expressed and adverse opinion of the law entertained by a judge does not constitute prejudice nor entitle a litigant to a change of venue. Notwithstanding that ruling, it remains a historic fact that an expression by a judge of his opinion of the law involved in a pending case was worse than prejudice. Such an act was made the first specification in the first article of impeachment of a judge of the United States Supreme Court, and one of the signers of the Declaration of Independence, before the United States Senate. Judge Samuel Chase was impeached for having expressed in writing his opinion upon the law of impeachment, and filed said opinion in writing at the opening of the trial of John Fries, accused of treason and before Fries' counsel could be heard upon the question.

The mutation of time has worked great changes in the law, if it was proper to impeach a judge a century ago for putting down in writing his opinion in law of a case before a counsel could be heard, and today holding that a fixed or adverse opinion of the law of a case does not furnish any grounds for asking that it be changed to another court.

The question under discussion is not receiving much public attention at present and does not interest the bar deeply. It is my conviction,—and it is much strengthened by the fact that most attorneys are able to say that they have never resorted to the affidavit of prejudice,—that lawyers who are frank with the Court in their practice have no difficulty in obtaining a change of the presiding judge if there is any valid reason or show of reason why the presiding judge should not try a particular issue. In practice there is no trouble in arranging to have some other judge called in if either party has any good reason for a change of judges. I believe there is practically always some ulterior motive back of an affidavit of prejudice. With few exceptions it is shyster practice and the privilege should be entirely wiped from the statutes.

## ADDRESS OF LYMAN J. NASH.

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Mr. President and Gentlemen:

I would gladly hear other members continue this discussion rather than speak myself. There are other men in the Association who could throw as much light on these questions as I can, and more. At least one member of the Legislative Committee who framed the present law providing for topical revision as a substitute for bulk revision which has entirely failed under modern conditions, is present with us today. I refer to Senator Whitehead. I would be especially glad to hear him. He could tell better than any one else just what happened and how the subject grew up in the legislature. I can, on this occasion, make only a few rambling statements respecting that and other matters that have just now been presented to you. Anything like full discussion is impossible.

When invited to speak on these same topics before the Circuit Judges last December, I consented to appear with the understanding that I would be allowed time to state the whole case. Judge Fowler assured me I could have all the time I wanted, and I actually occupied about two and a half hours in the presentation. I mention the time consumed there, not to prepare this convocation for a similar infliction, but to lend emphasis to one matter that I cannot omit to refer to even here, namely, the complexity of the interrelationship of all these questions, the need of patient study to understand them, and the impossibility of presenting them by any flash-light process. I did not appear there, and I do not respond here; to answer a few pin-pricks about the index of the Statutes. There are enough of those errors—too many; but I am eliminating them just as rapidly as I know how to do it.

The reason Mr. Kemper did not find "Notice of Trial" was because he did not understand or did not remember at the time that between the black-faced title "Notice" and the black-faced title "Notice of Trial" there was "Notice of Appeal" and "Notice of Election". In an alphabetical index it is necessary to arrange titles alphabetically first by the first word of the title, and then by the second or third word also if the title contains two or three words. If that is once under-

stood it explains a good deal. The alphabetical method of indexing seems to be growing in popular favor. It seems to be gradually superseding the analytic or logical method. It is easy to see why this development goes on. The alphabetic method, although mechanical and arbitrary, is certain and universal; while an index based on logical analysis is necessarily individualized by the logic of its author. Any other author, equally logical, would make a different index. And every user of a logical index must first unlearn his own logic and analysis and familiarize himself with the logic and analysis of the indexer.

In order to construct an alphabetical index we cannot analyze all statute law and then utilize resulting headings. We must use that word for a title that will guide the searcher up to the goal he seeks. But another searcher will often make use of another word as his guide to the same goal. It follows that both words should be used as titles, but they should be located wherever alphabetical order places them. For example: The titles "Homicide" and "Murder" will be located alphabetically a long way apart. One searcher will look in the index for "Homicide" and another for "Murder"; but both will find the same set of references either directly or through a cross-reference under one of them. If on the other hand the logical method were employed there would be a comparatively few grand departments, such as "Criminal Law", "Probate Law", "Real Estate Law" and others, with subtitles under each of them. While in the case of "Murder" or "Homicide" the searcher might think that one of those titles ought to stand at the head of its subdivisions, where would he look for "Larceny", or "Libel", or "Assault and Battery"? Of course he could find all of these topics, but he would not be able to do it with anything like the facility that an alphabetical arrangement will afford.

Since the original index appeared in the Statutes of 1911, there has been constant improvement. The index of 1913 was much better than the index of 1911; and the index of 1915 was a very great improvement upon that of 1913. Since 1915 two years of constant work by a competent indexer has been devoted to its further improvement and I confidently expect and believe that the index to the Statutes of 1917 will be



found satisfactory and approved by reasonable people generally.

Now in regard to the general plan of biennial issues: I imagine that if we were to take a rising vote right here now a majority would be in favor of continuing biennial issues. I do not know that, of course, but among the lawyers of the state at large I am convinced that a large majority would oppose the dropping of biennial issues very vigorously.

On the question of cost, not having the figures with me, I cannot speak exhaustively. But I have figured it out and am ready to go before any Committee of the Legislature—and there is where the question must be worked out. But it is a little misleading, not intentionally so of course, but when you stop to think you will see it is misleading, to cite the desirability of West's Compiled Federal Laws, and the other issue of federal statutes. Why, the publishers of those books can sell in the City of New York alone more sets than Wisconsin can sell of her single volume of statutes in the whole state; then when you multiply that by all the other large cities and by the whole country, and consider the price, \$70.00 or \$80.00 per set, you can see why the constituency and the price of those publications warrant a work so much larger and more expensive. But to get any such set of books here would be so expensive I am sure the legislature would not attempt it. Instead of two books like the Statutes of 1898, the added statutory matter and the added interpretations by the Supreme Court would require four volumes to contain it all, and probably an index volume besides. Have you any idea what that would cost the State of Wisconsin? Of course I admit that cost ought not to be too much considered, but you cannot get the legislature to entirely ignore it and you have got to deal with the legislature step by step in all these things that relate to the statutes. I can tell you from actual investigation that the Statutes of 1878, containing scarcely one-third as much matter as the present Statutes, (and that was not annotated), cost the State of Wisconsin \$73,000. Such a set of books as you are talking about, on the same basis, would cost the state at least \$200,000.

I cannot without any preparation do very much here to convince you that this plan, or that plan, is the best, because the demonstration involves so many facts. We must sit down

with the printer; we must sit down with the legislatures; and we must figure this all out; and when it is all figured out I think you will drop the idea of having a reissue every six years of a set of four or five books such as you have described. You simply cannot get them. It is one of the impossibilities of the situation. We may as well look at this question as a practical one and try to get the best thing we can.

Now, my eyes, I presume, enjoy large type as well as the eyes of other men of my age. I like to see nice paper, unfinished soft surface; but when one serves the State of Wisconsin he must consider that in some way all the laws must be distributed to every town. Towns use and study the Statutes. If you were to provide Statutes in sets, such as have been described, could the state afford to send a set to each town? All these things have to be considered, and they have been worked into a system, and the Statutes as they are, are a part of that system.

It does not follow, of course, because biennial issues have worked well up to now, and I believe for one or two more issues they will continue to work well without substantial change, that they will not have to be changed ultimately. It is unsafe to tie to a hard and fast theory about the future. Let us wait and first see what the difficulties are to be in the future. Of course one of the difficulties will be the increasing number of court decisions to be included in the annotations. The lawyers of the state are eager for the annotations, and they are certainly better served at present with them than by the old plan. They would be very reluctant to not get those annotations as promptly as possible. But when the annotations become so numerous that the Appendix to the Statutes can no longer contain them, it will be necessary to do something else. I can merely point out now what *may* be done. It may be possible then to take all those annotations and work them over. Some of them are obsolete. Others relate to sections of statutes that have been repealed. A great many of them could be eliminated in that way and what remained I think could be put into a smaller volume than the present one. So that question may possibly be solved in that way.

Then there is another thing to be considered: The statutes are, as it has been suggested, being added to very largely at every legislative session. But we had hoped, in the Revisor's

office, that we could cut out as much dead matter as the new matter that would come in. We have not progressed far enough yet with this process to know whether we can do that or not. We will know more about it when the next volume issues. We know already, however, that revision at this session will cut out a large amount of worthless and dead matter, and we hope it will keep down the size of the volume as much as the new matter will add to it. But whenever it is found that the contents are too large for a single volume, the Statutes must be bound in two volumes. But if two volumes are desired even now, all that is necessary is to tell the Superintendent of Public Property when ordering that you would like to have the two volume set, because upon request the Statutes at present are bound in two volumes. It costs only the additional expense of the extra binding. In regard to single or double binding I have tried to find out what the preference of lawyers is, and according to the best judgment I can form from their communications, a large majority prefer the single volume. In my office I have two sets, one a double volume. From choice I constantly use the single volume. Of course, if we had the statutes annotated in the form of the Statutes of 1898, and there were four or five volumes, I would be glad to use even that number.

Now let me mention another thought that comes to me. Some think that the statutes have become a sort of loose-leaf ledger manufactured up in the Revisor's office, that they are without any sanctity, without the veneration that comes with age, and that perhaps it would be best to get back to the good old days when people had statutes that they venerated. The Statutes of 1898 are still the statutes of Wisconsin. They are the basis of every issue. The Statutes of 1898 have never been repealed, except some particular parts; but the body is still preserved. The Wisconsin Statutes are the Statutes of 1898, with such additions as new enactments have made, with such subtractions as repeals have effected, and with such modifications as have come from amendment. So far as age is concerned we have now the most venerable body of statute law the state has ever had. The Statutes of 1849 were repealed in 1858. The Revised Statutes of 1858 were repealed in 1878. The Revised Statutes of 1878 were repealed in 1898. But the Statutes of 1898 stand today and, as far as

one can foresee, they are going to stand a long time in the future. So we have greater stability than the state ever had before in the actual body of its statute law. We have also the elasticity of arrangement that allows the incorporation year by year, or session by session, of all new enactments of general law, thus maintaining Wisconsin Statutes as a distinct and continuous body of statute law.

OFFICERS OF THE AMERICAN BAR ASSOCIATION

OFFICERS OF THE AMERICAN BAR  
ASSOCIATION, 1917-1918.

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**President:**

Walter George Smith, Philadelphia, Pa.

**Secretary:**

George Whitelock, Baltimore, Md.

**Assistant Secretaries:**

W. Thomas Kemp, 1416 Munsey Bldg.,  
Baltimore, Md.

Gaylord Lee Clark, Baltimore, Md.

**Treasurer:**

Frederick E. Wadhams, Albany, N. Y.

**Vice President for Wisconsin:**

W. A. Hayes, Milwaukee.

**Member of General Council for Wisconsin:**

John B. Sanborn, Madison.

**Local Council:**

Hon. Edward T. Fairchild, Milwaukee.

Eben R. Minahan, Green Bay.

William R. Graves, Prairie du Chien.

Gullick N. Risjord, Ashland.

George E. Morton, Milwaukee, *ex-officio*.

**Delegates to Meeting of American Bar Association, Saratoga  
Springs, N. Y., 1917:**

Hon. E. B. Belden, Racine.

Hon. E. T. Fairchild, Milwaukee.

Bernard R. Goggins, Grand Rapids.

## OFFICERS OF THE STATE BAR ASSOCIATION OF WISCONSIN, 1917-1918.

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### President:

Hon. R. D. Marshall, Madison.

### Vice-Presidents:

- 1st Circuit: C. D. Barnes, Kenosha.
- 2nd " W. H. Timlin, Jr., Milwaukee.
- 3rd " Frank C. Stewart, Oshkosh.
- 4th " L. J. Nash, Manitowoc.
- 5th " T. M. Priestly, Mineral Point.
- 6th " C. L. Baldwin, La Crosse.
- 7th " W. E. Fisher, Stevens Point.
- 8th " Spencer Haven, Hudson.
- 9th " John B. Sanborn, Madison.
- 10th " T. H. Ryan, Appleton.
- 11th " Charles Smith, Superior.
- 12th " A. E. Matheson, Janesville.
- 13th " A. J. Frame, Waukesha.
- 14th " S. H. Cady, Green Bay.
- 15th " William E. Shea, Ashland.
- 16th " F. E. Bump, Wausau.
- 17th " C. A. Veeder, Mauston.
- 18th " John J. Wood, Jr., Berlin.
- 19th " Roy P. Wilcox, Eau Claire.
- 20th " E. C. Eastman, Oconto.

### Secretary-Treasurer:

George E. Morton, Milwaukee.

### Assistant Secretary:

Arthur A. McLeod, Madison.

### Executive Committee:

The President, Secretary-Treasurer and the Chairman of  
each of the six committees:

Hon. R. D. Marshall, Madison.

George E. Morton, Milwaukee.

Joseph B. Doe, Milwaukee.

P. H. Martin, Green Bay.

Robert Wild, Milwaukee.

B. L. Parker, Green Bay.

H. S. Richards, Madison.

W. A. Hayes, Milwaukee.

## STANDING COMMITTEES, 1916-1917.

(With Date of Expiration).

## Legal Education:

Dean H. S. Richards, Madison, 1918 (Chairman).  
R. A. Hollister, Oshkosh, 1918.  
Vroman Mason, Madison, 1918.  
Francis E. McGovern, Milwaukee, 1919.  
Albert S. Larson, Shawano, 1919.  
S. H. Cady, Green Bay, 1920.  
Charles T. Hickox, Milwaukee, 1920.

## Judicial:

Joseph B. Doe, Milwaukee, 1919 (Chairman).  
Daniel H. Grady, Portage, 1918.  
Solon L. Perrin, Superior, 1918.  
F. R. Bentley, Baraboo, 1919.  
Judge John Barnes, Milwaukee, 1919.  
Edgar L. Wood, Milwaukee, 1910.  
M. J. Wallrich, Shawano, 1920.

## Amendment of the Law:

P. H. Martin, Green Bay, 1919 (Chairman).  
Judge A. H. Reid, Wausau, 1918.  
John F. Martin, Green Bay, 1918.  
Frank H. Hanson, Mauston, 1919.  
Roy P. Wilcox, Eau Claire, 1919.  
Judge C. A. Fowler, Fond du Lac, 1920.  
W. D. Corrigan, Milwaukee, 1920.

## Necrology:

Robert Wild, Milwaukee, 1920 (Chairman).  
George L. Williams, Grand Rapids, 1918.  
H. J. Frame, Waukesha, 1918.  
W. K. Parkinson, Phillips, 1919.  
Andrew Lees, La Crosse, 1919.  
W. R. Bagley, Madison, 1920.  
J. E. McMullen, Chilton, 1920.

**Publication:**

W. A. Hayes, Milwaukee, 1920 (Chairman).  
John C. Thompson, Oshkosh, 1918.  
John J. Wood, Jr., Berlin, 1918.  
J. B. Kemper, Milwaukee, 1919.  
Chauncy E. Blake, Madison, 1919.  
Judge Geo. C. Hume, Chilton, 1919.  
L. G. Wheeler, Milwaukee, 1919.

**Membership:**

B. L. Parker, Green Bay, 1919 (Chairman).  
J. E. McConnell, La Crosse, 1918.  
M. E. Walker, Racine, 1918.  
H. L. Butler, Madison, 1919.  
A. E. Matheson, Janesville, 1919.  
E. D. Minahan, Rhinelander, 1920.  
Raymond J. Perry, Milwaukee, 1920.

**SPECIAL COMMITTEES.****Uniform Judicial Procedure:**

C. B. Bird, Wausau.  
Walter C. Owen, Madison.  
John F. Martin, Green Bay.

**Retirement of Judges:**

Until 1919.  
W. A. Hayes, Milwaukee.  
J. Henry Bennett, Viroqua.  
Morton E. Davis, Green Bay.  
Merlin Hull, Madison.  
Otto A. Oestreich, Janesville.

**Criminal Law and Criminology:**

Judge August C. Backus, Milwaukee.  
George B. Hudnall, Milwaukee.  
E. E. Brossard, Madison.  
A. L. Hougén, Manitowoc.  
Winfred C. Zabel, Milwaukee.

**Committee on Address of Ex-Pres. B. R. Goggins:**

Prof. Howard L. Smith, Madison.  
Harry L. Butler, Madison.  
Justice M. B. Rosenberry, Madison.





**REPORT**  
**OF THE**  
**PROCEEDINGS OF THE MEETINGS**  
**OF THE**  
**State Bar Association**  
**OF WISCONSIN**

**JUNE 26, 27, 28, 1918**

**MILWAUKEE, WIS.**  
**WISCONSIN PRINTING CO., CATALOG PRINTERS**  
**—1919—**



PROCEEDINGS  
OF THE MEETING OF  
**THE STATE BAR ASSOCIATION OF  
WISCONSIN.**

HELD AT THE ELKS' CLUB.

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RACINE, WISCONSIN, JUNE 26, 27, 28, 1918.

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Meeting called to order by President Marshall.

**PRESIDENT MARSHALL:** Thank you Gentlemen. Mr. Thompson, President of the Local Bar Association, of Racine Co., will make a short congratulatory address.

**MR. THOMPSON:** I did not come here, Gentlemen, to make any address. My purpose here is to welcome you on behalf of the Bar of Racine County, and on behalf of the City of Racine, particularly. Gentlemen, on behalf of the Club that owns this building, we want you to make yourselves absolutely at home here just the same as you would be in your own home. We want you to use these porticos the same as you would use your own porch.

Now there is one other thing, Gentlemen. We come here for two purposes, or perhaps, three. One is for instruction. That the Executive Committee and the officers of the State Bar Association, have looked after. The other is for relaxation and recreation, and that we have looked after here. We have of course this little banquet, so-called War Dinner, Thursday evening. These are war times, and the only reservations that will be made are in favor of those who have purchased their tickets, and the only way of checking

up is by checking up with a dollar for each ticket. But the big show, Gentlemen, is coming off Friday, and what that is will be announced later. We want you all to stay over till Friday, for the big doings, and we certainly will be very much disappointed if you do not.

Now, Gentlemen, we hope that you will all make yourselves absolutely at home in this building, and in this town, and if any of you get into trouble just let us know. We have a proper stand-in with the authorities to get you out all right without it getting into the newspapers. We want you to use our parlors, and our little room downstairs. You know we have a smoking room down there, and if a man is really thirsty and doesn't want any water, why he can get some lemonade, or ginger ale, or anything of that kind he desires. This is more comfortable here than the hotel lobby, and the officers of this building I think will be greatly disappointed if you gentlemen do not make yourselves just as much at home here as you would in your own homes. That is the spirit of the great organization that is represented in this Club. It owns this club building. It is the same spirit that pervades that organization throughout the country. Thank you.

PRESIDENT MARSHALL: I think we will all take advantage of the suggestions in this pleasant welcoming address by Mr. Thompson. The first thing in order is the delivery of the address by the President of the Association, and I will proceed to perform my duties in that regard. (See Appendix, page 443, for address.)

THE PRESIDENT: Next in order is the report of the committee on membership.

### REPORT OF COMMITTEE ON MEMBERSHIP.

To the Wisconsin State Bar Association:

Your Committee on Membership hereby reports that during the past year the following applications for membership have been received and approved as of the dates indicated on the applications respectively:

Charles H. Wiegand, Eagle River.  
 Edward F. Higgins, Kenosha.  
 Walter W. Hammond, Kenosha.  
 Peter Fisher, Kenosha.  
 Joseph R. Clarkson, Kenosha.  
 James Cavanaugh, Kenosha.  
 Robert V. Baker, Kenosha.  
 G. A. Mittelstead, Kenosha.  
 Morris Barnett, Kenosha.  
 Alfred L. Drury, Kenosha.  
 Henry J. Hastings, Kenosha.  
 A. J. Albrecht, Kenosha.  
 Richard P. Cavanaugh, Kenosha.  
 Clifford E. Randall, Kenosha.  
 John C. Slater, Kenosha.  
 Edward C. Thiers, Kenosha.  
 Walter M. Burke, Kenosha.  
 Harlan B. Rogers, Portage.  
 Lathrop W. Hull, Oshkosh.  
 John P. McGalloway, Fond du Lac.  
 William H. Page, Madison.  
 William Smieding, Jr., Racine.  
 Elbert B. Hand, Racine.  
 John H. Liegler, Racine.  
 Thomas W. Kearney, Jr., Racine.

Adolph R. Janecky, Racine.  
 William J. Knoblock, Racine.  
 Jerome J. Foley, Racine.  
 Guy A. Benson, Racine.  
 William J. Morgan, Milwaukee.  
 Hiram Hayes, Superior.  
 Edward E. Schultz, Juneau.  
 George H. Eckhart, Madison.  
 Clarence A. Lamoreux, Ashland.  
 Herbert Van Cowles, Madison.  
 Charles F. Millmann, Milwaukee.  
 William A. Klatte, Whitefish Bay.  
 Orlando M. Wanvig, Colfax.  
 John Harrington, Oshkosh.  
 Clinton G. Price, Mauston.  
 George P. Ettenhelm, Milwaukee.  
 Charles A. Thekan, Milwaukee.  
 Lenore R. Mesiroff, Milwaukee.  
 Walter J. Rush, Neillsville.  
 Samuel M. Smith, Janesville.  
 Maximilian W. Heck, Racine.  
 Max Schoetz, Jr., Milwaukee.  
 J. L. Kelley, Wausau.

Your Committee, therefore, recommends that each of the persons named be elected members of the Association.

June 26, 1918.

B. L. PARKER,

Chairman of the Committee on Membership.

MR. PARKER: The Committee reports favorably on them and recommends their election as members of the Association. The election of these gentlemen from Kenosha gives Kenosha 100% record. The Committee is hoping that some of the other cities of the state will emulate Kenosha before the end of this convention, and the committee will receive applications and will ask leave to make a supplemental report if other applications are received.

PRESIDENT MARSHALL: I do not think any motion is necessary for the adoption of this report, but all those in favor of the adoption of the report of the Committee will manifest it by saying "aye."

The report was thereupon adopted unanimously.

THE PRESIDENT: The next in order will be the Secretary's report.

SECRETARY MORTON: Mr. President, I have not yet quite completed the Secretary's report. I have the Treasurer's report, however.

THE PRESIDENT: We will take the Treasurer's report at this time.

### TREASURER'S REPORT.

The undersigned begs leave to present to the Association his report as Treasurer covering the period from the date of his last report, June 27th, 1917, to the day of this one, June 26th, 1918.

#### RECEIPTS.

Balance on hand at last Report.....	\$1,543.24
Receipts from dues.....	948.15
Receipts from sale of Reports.....	12.00
Interest on two certificates of deposit, \$500 each.....	30.34
Total receipts .....	<u>\$2,533.73</u>

#### DISBURSEMENTS.

##### Checks

No.		
192	To G. E. Morton, for June salary.....	\$ 25.00
193	To Postmaster for stamps.....	2.00
194	To Walter G. Merritt, 135 Broadway, New York, on expense.....	20.00
195	To Harry Olson, expense.....	6.25
196	To Park Hotel Co., telegram to Pres. Wilson .....	1.12
197	No Check for this number.....	....
198	To Postmaster for envelopes.....	1.74
199	To the Wells Fargo Express Co., for express charges from Madison.....	.48
200	To American Express Co., for express charges from Madison.....	.51
201	To B. L. Parker, for postage used in sending out notices to non-members.	22.00
202	To Stuebe B. Printing Co., printing for Membership Committee .....	14.75
203	To Walter G. Merritt, balance expense Madison meeting .....	77.39
204	To Meyer-Rotlier Co., for programs, notices and envelopes for Madison meeting .....	33.80
205	To Wisconsin Telephone Co., telephon- ing prior to our meeting.....	2.10
206	To Park Hotel, Madison, Wis.:— Expense of W. G. Merritt... \$7.55 Expense of Judge Olson..... 6.00	13.55

207	To Postmaster for stamps, notices to new members .....	3.00
208	To Wisconsin Telephone Co., toll.....	.95
209	To Postmaster for stamps.....	2.00
210	To Greene Printing Co., letterheads..	3.00
211	To Chester G. Porter, reporter.....	60.00
212	To balance on stamped envelopes....	20.00
213	To G. E. Morton, for July salary.....	25.00
214	To Siekert & Baum Co., for file cards..	1.15
215	To cash telephone toll, Bagley, Madison	.25
216	To Greene Printing Co., for postcard notices .....	6.50
217	To G. E. Morton, for August salary...	25.00
218	To Postmaster, for stamps.....	2.00
219	To Greene Printing Co., for letter-heads for Marshall.....	3.25
220	To G. E. Morton, for September salary.	25.00
221	To G. E. Morton, for October salary..	25.00
222	To G. E. Morton, for November salary.	25.00
223	To Postmaster, for stamps.....	1.50
224	To Western Union Telegraph Co., bill of November 23rd.....	.94
225	To G. E. Morton, for December salary.	25.00
226	To G. E. Morton, for January salary..	25.00
227	To G. E. Morton, for February salary..	25.00
228	To G. E. Morton, for March salary....	25.00
229	To C. J. Stiles, for stamps for parcel post to Glazier, Madison.....	.25
230	To G. E. Morton, for April salary....	25.00
231	To C. J. Stiles, for telegram from Pres. W. G. Smith.....	.40
232	To Postmaster, for stamps.....	15.00
233	To G. E. Morton, for May salary.....	25.00
234	To Wisconsin Telephone Co., telephone Thompson, Racine, Wis.....	.35
235	To Western Union Telegraph Co., May bill .....	5.06
236	To Meyer-Rotler, for programs.....	31.75
237	To American Express Co., package, Racine .....	.30
238	To Evening Wisconsin, stamps for report .....	18.68
239	To Evening Wisconsin, stamps for report .....	6.76
240	To Wisconsin Printing Co., package reports of proceedings of 1917.....	399.20
241	To G. E. Morton, for June salary....	25.00
242	To Meyer-Rotler Co., programs.....	14.00
243	To G. E. Morton, sundry expenses....	3.35
		<hr/>
		\$1,120.33      1,120.33
		<hr/>
		\$1,413.40

THE PRESIDENT: It is customary to have a Committee of Audit. I will not wait for a motion in that regard. I take it that it is the sense of the Association that a committee shall



be appointed to audit the Treasurer's Report. I will appoint Mr. Burr W. Jones and Mr. E. C. Eastman the Committee of Audit to audit the Treasurer's report.

THE SECRETARY: Mr. President, I think perhaps at this time I ought to read into the record the response which was received to the telegrams which were sent to the president by our Association last year. With your permission I will read it. The telegram which was sent, was:

"We tender to President Wilson our cordial and unwavering support in his devoted efforts to maintain the honor of our country in the tremendous world conflict that now threatens the continuation of our civilization."

The reply received is:

"The President thanks you cordially for the good will which prompted your kind message, which has helped to reassure him and keep him heartened."

THE PRESIDENT: I think the next in order would be to read the report of the Executive Committee. No report seems to be necessary regarding performance of the ordinary duties of the Executive Committee and the by-laws of the Association. The only special references to the committee were first, the matter of the time and place for holding the annual meeting of the Association in 1918; second, the appointment of a committee to consider the annual address delivered by Mr. B. R. Goggins, as president of the Association at the last annual meeting, for consideration and report as to what, if any, action the Association should take in respect thereto; the recommendations to be printed, and a copy to be sent to each member of the Association, and to each member of the Bar, whether a member of the Association or not, not less than twenty days in advance of the next meeting of the Association; and further, that if financially feasible, a copy of the address to be sent to each member of the Bench, and each member of the Bar of this state, whether a member of the Association or not. As to the first of such matters the committee beg leave to report that it accepted a formal invitation made by the Racine County Bar Association for the meeting to be held in the City of Racine, and the committee designated June 26th, 27th and 28th as the time of the meeting.

As to the second matter, Prof. Howard L. Smith, Harry L. Butler and Justice M. B. Rosenberry were appointed as a

special committee, and each, though rather late, was furnished with a copy of the address. Your committee exercised the discretion given therein as to sending a copy of the address to members of the Bench and Bar in favor of not sending the same on account of the expense that would otherwise be incurred. There was a reference to the president of the matter of appointing three delegates to attend a conference of delegates representing the various states and other Bar Associations of the nation, to be held at Saratoga Springs on the day of the meeting of the American Bar Association in September, 1917; such conference to consider first, how can bar associations help the public; a second, how can bar associations represent the public; third, how can bar associations help raise the standard of the profession. That was handled as usual by the president without the committee acting upon it. Pursuant thereto, the following were appointed as such delegates: Hon. Edward T. Fairchild, Hon. E. B. Belden, and Mr. B. R. Goggins. Also a committee was appointed to represent the State Bar Association at the Loyalty Meeting in Chicago. Pursuant thereto the following were appointed: Willet M. Spooner, George E. Morton, and Hon. John M. Whitehead. The Association was also invited to appoint delegates to attend the Win the War for Permanent Peace Convention, held in Philadelphia May 16th and 17th this year. Pursuant thereto the following persons were appointed, with power of substitution: Hon. J. B. Winslow, Mr. George E. Morton, Mr. W. A. Hayes, Judge Edgar V. Werner, Mr. B. R. Goggins, and Mr. P. H. Martin.

It has been customary on some other occasions that appointees in that way acting as a committee, made a report to the Association. Of course it would be very well to make a report in this case if they see fit to prepare one.

### COMMITTEE ON NOMINATIONS.

Now there will be some little time required probably, by the committee that will act upon the nomination of officers for the ensuing year. Therefore I take it as the sense of the Association that the committee should now be appointed, and I will appoint such committee without any motion being made. If no objection is made I will proceed to appoint Mr. Killilea, Mr. Frank Bentley, Mr. Lamb, Mr. Whitehead, and Mr. Mc-

Connell, of La Crosse. Maybe it will help you somewhat if you, at a proper and convenient time, will consult with the Secretary, unless you have clearly in your own minds the field to be covered with reference to the officers.

On the subject of the vice-presidents, I recall to mind that there was a little error in the record, so I will put Mr. Eastman back as the Vice-President in his circuit. I suggest you put him down for Marinette instead of Oconto.

The next order of business is this committee on Ex-President Goggins' address. Howard L. Smith is the chairman of that committee. We will listen to his report at this time.

#### REPORT OF SPECIAL COMMITTEE ON EX-PRESIDENT GOGGIN'S ADDRESS.

At the 1917 meeting of the Association after the reading of the president's address, the following resolution was adopted:

*Resolved*, That the annual address of President Goggins be made the subject of special consideration at the next annual meeting of this Association.

(2) That the Executive Committee be directed to refer it to a special committee or committees for consideration and report as to what, if any, action by this Association is desirable, such recommendations to be printed and sent to the members of the Association not less than 20 days in advance of the meeting of the Association.

Pursuant to this resolution the Executive Committee of the Bar Association seasonably appointed this committee of three—but by some oversight the committee were not notified of their appointment. The first intimation of its existence that the committee had, came less than thirty days ago in the form of an inquiry for the manuscript of its recommendations for the printer. The engagements of some members of the committee were then such that it was impossible for the committee to have a meeting for about a week and not even then a full meeting. But even if the committee had been able to convene at once and devote all its time to its committee duties, it would have been impossible at that late day to have complied in any manner worthy of the Association or just to the author of the address with the mandate of the

Association. The committee regrets exceedingly that this is so—but its conscience is perfectly clear, the fault is not with the committee.

Under these circumstances the committee thinks that the most useful approximation to the performance of its functions that is now possible is to refresh the memory of the Association by briefly summarizing the most important suggestions contained in Mr. Goggins' fruitful address, indicate some of them which seem to the committee well worthy of further consideration and report, and then ask further time for the detailed study and recommendation which the action of the Association contemplates. For the suggestions are too important to be passed upon hastily or perfunctorily by a meeting having no notice of what recommendations would be made. The committee now knows that it has been appointed, will take cognizance of an extension of its life, if it shall be granted, and will devote its time and such talents as it has to the work prescribed in the resolution.

The address of President Goggins contained nine leading suggestions looking toward either amendment of the law by legislative enactment or extra-legislative reform in the practice of bench and bar. These suggestions may be roughly indicated as follows:

1. Over-technical rules of evidence.
2. Less than unanimous verdicts.
3. Simplifying and cheapening appeals—abolition of the "printed case."
4. Shortening of opinions and abridging the reporting and publishing of same.
5. Principles of appellate decision.
6. Extension of appellate jurisdiction—for instance to the hearing of testimony on appeal in certain cases.
7. Association activities between sessions.
8. Increase in membership of the Bar Association, whether it should be made compulsory on lawyers, and the Minnesota plan.
9. The harmonizing of inconsistent statutes—e. g. in the subjects of eminent domain, municipal bond issues, village and city government.

As to the overtechnical rules of evidence or the over-technical application of rules of evidence, the address quotes

with an approval in which the committee joins, the statement of Mr. Root, as President of the American Bar Association that "You can not cure it by legislation." It is primarily a matter of the attitude of the Bench especially the trial Bench, but your committee are of the opinion that it might serve a useful purpose to consider and point out somewhat more in detail particulars in which the rules of evidence might with advantage be more liberally administered, with a view to securing the approval of the Association of some specific modifications of judicial attitude. It is, moreover, possible that some of them require legislative modification. The rule of the common law, for instance, that attested documents could be proved only by the oath of the attesting witness, if he were anyway available, is a rule that has been mentioned apologetically by many courts that have administered it and that has been modified or abrogated by legislation in many American States. It obtained the approval, however, in its most stringent form, of our Supreme Court, in 1846, in *Carrington vs. Eastman*, 1 Pin. 650. It may be that the only way of escape now from what was, perhaps, an unfortunate precedent will be through legislative action. The committee does not at this time express any opinion about it.

We may point out in this connection that there are matters of great importance in connection with the law of evidence which would be properly within the scope of the consideration and recommendations of this Association, though we do not feel at all sure that they are included within the scope of Mr. Goggins' recommendations, restricted as they seem to be to "over-technical rules of evidence or over-technical application of existing rules." There is, for instance, the whole subject of expert testimony as to which there seems to be a pretty general agreement that this branch of the law is a scandal to American jurisprudence and a reflection on the ability of the bar to perfect the machinery of justice. But while this is true, there would, no doubt, be wide diversity of opinion as to the appropriate remedy. It is a subject in which this Association has not, so far as its records disclose, ever taken any interest. It has been left to another association to take the only action seeking to remedy in part the present unsatisfactory condition of the law and practice as to expert testimony. The Wisconsin branch of the American Institute

of Criminal Law and Criminology, adopted a scheme for a board of accredited alienists, put their recommendations in the form of a bill, and had the bill introduced in the legislatures of both 1911 and 1913. In 1913 it passed the Senate by a vote of 22 to 2, but failed to pass the assembly. The bill, if passed, would have radically modified the practice in controversies over insanity, and, in the opinion of its promoters, have taken away much of the odium that now justly attaches to this branch of litigation. The committee expresses no opinion as to its merits. It wishes to call attention, however, to the fact that the State Bar Association took no cognizance whatever of this very important proposal, and that the gentleman who most actively promoted the recommendations of the Institute before the legislature (Mr. Goggins) complains that he was continually handicapped by the demand to know whether his proposals had received the approval of the State Bar Association (Abstract of Proceedings of the Wisconsin Branch, Sixth Annual Meeting, p. 16). The 1916 meeting of the Wisconsin Branch of the Institute accordingly passed a resolution instructing its president "to bring before the State Bar Association, \* \* \* \* the proposition of having, as part of its organization, a committee on criminal law and criminology." To this request the Association good naturedly acceded and appointed a committee of five members on criminal law and criminology. (Proceedings, State Bar Association, 1916, pp. 13 and 174).

The records of the Association do not disclose that this committee has ever made any report. But there is available for either it or this or some other committee and ultimately for the Association a heritage of questions of the law of evidence descended to us from the Institute. That body had the courage of its convictions. It recommended a large number of changes in the law of criminal evidence most of which will be found adverted to in the address of the President at the 1914 meeting of the Wisconsin Branch of the Institute. They include such radical propositions as an amendment to the constitution permitting the criminal defendant to be adversely examined both at and before trial, abolishing the privilege against self incrimination and providing for the taking of depositions by either party in criminal cases, both within and without the state under certain circumstances, as

well as many other important but less innovating recommendations. These propositions had various legislative fates, most of them passing at one session or another one house or the other—but few, if any, of them becoming law—largely because of the lack of any organized official attitude on the part of the bar. It seems almost incredible that such fundamental questions could be so long and so influentially agitated without attracting the attention of those whose education and experience qualify them pre-eminently to pass intelligent judgment upon them. And it seems very much to be regretted when we reflect that as legislatures are now constituted there have, in recent years, been not a sufficient number of lawyers in the assembly to fill up the membership of the judiciary committee. Farmers, bankers, and business men have had to supplement the lawyers, actual and nominal, on the legal committee of its most numerous legislative body. There can be little doubt that a committee thus constituted would welcome the assistance, if not the guidance of the State Bar Association with reference to all these questions of evidence. They are, in the judgment of this committee, sufficiently numerous and important to warrant careful investigation and report, in order that this Association may, upon consideration, be advised as to what, if any, changes in the law and practice with respect to evidence by either legislative or judicial action are desirable in this state and make its recommendations accordingly. Such report should include copies of proposed bills, where legislation is recommended and at least its recommendations and a sufficient abstract of its report to make its recommendations intelligible and it should be put in the hands of the members of the Association before the meeting at which they are to be discussed. Finally there should be a provision that the recommendations of the Association for legislation, if it makes any, be presented to the legislature in the name of the Association and be there so explained and defended as to leave no doubt in the legislative mind, that there is in this state a bar association taking an intelligent and unselfish interest in legal questions, and alive to its public obligations.

To the other suggestions in Mr. Goggins' address we shall not, in this preliminary report given such extended notice.

His second suggestion is for a non-unanimous verdict in both civil and criminal cases.

The Unanimous Verdict was the subject of papers before this Association in 1899 by Edward P. Vilas and L. J. Nash and in 1903 by Judge George Clementson. The last paper proposed a constitutional amendment to permit the legislative authorization of non-unanimous verdicts. This proposition was referred to the Committee on Amendment of the Law. It came again before the Association in a very exhaustive and painstaking paper and report by Judge James O'Neill and another paper by C. A. Lamoreaux in 1905. At that meeting the matter was put over for a year, and the Secretary directed to take a vote by mail of the members of the Association. The committee are not aware that this mandate of the Association was ever complied with. The proceedings of the Association for 1906 contain no report by the Secretary and no member of the Association whom we have consulted has any recollection of any such vote having ever been taken.

Under these circumstances the committee feels that if it undertook to make a report on this subject it could scarcely do better than to call the attention of the Association to the voluminous and unusually able discussion already in print and available to its members. This object will perhaps have been sufficiently accomplished by the present report. We suppose it would still be entirely in order for the secretary to take the vote ordered in 1905.

3. In the matter of simplifying and cheapening appeals, the author of the address has collected a considerable mass of information as to what has been done in other states, pointing out that in twelve out of thirty states the printing of a case on appeal has been made optional or entirely abolished and that in some states the record itself never reaches the Supreme Court except on special order. In some cases not even briefs are required to be printed. Such material, obviously collected with much labor, ought to be critically examined with an open mind with a view to availing ourselves of the results of experience elsewhere.

4. In the matter of shortening opinions and reducing the amount of reporting and publishing the same, Mr. Goggins has again not contented himself with a mere general expression of opinion, but has collected information as to practice



elsewhere. While the situation in this respect is in this state confessedly much better than in many states, it may well be that a study of this material will disclose methods for even greater improvement.

5. In the matter of principles of appellate decision the address concedes the dominance in Wisconsin, both by legislative enactment and judicial attitude of a liberal and rational spirit. It makes the interesting suggestion that appellate power should be so extended in practice (with appropriate legislation to authorize it) as to permit the reception by such courts of additional "testimony not only to determine whether or not error in the admission or rejection of evidence was prejudicial, but on the merits where there has been a lack of evidence, and thereupon to enter such final judgment as such court concludes should on the merits be awarded," "similar to that exercised by the appellate courts of England."

This is a suggestion of too much importance to be either ignored or lightly recommended. It may appropriately form the subject of further study and recommendation.

The seventh and eighth suggestions of the address embracing the legal recognition in the governmental machinery of the state of the Bar Association, with compulsory membership therein of all practitioners, the promotion of county and local bar associations and their co-ordination with the State Bar Association, as well as with the American Bar Association, and in general, the promotion of the dignity and usefulness of our calling by emphasizing its professional and public character at the expense of its too-much-emphasized private and business nature, appear to the committee to set up ideals of unquestioned worth and nobility. To what extent they can be promoted by either legislation or the formal action of this Association, the committee are not sure. But it deems the subject well deserving of careful consideration with a view to possible recommendations in the future.

9. The last suggestion of this address to which we advert is the harmonizing of inconsistent statutes, attention being especially directed to the subjects of eminent domain, municipal bond issues, and village and city government—though these particular subjects are mentioned, we take it, only as examples. Too obviously for comment these are matters for

detailed examination on which general recommendations made upon hasty inspection would be worse than useless.

As I have gone over the matters suggested by this pregnant address, the thought must have occurred to many of you that the subjects are too vast and too varied to be satisfactorily examined and disposed of by one committee. But there will be a certain advantage in having the matters under the control of one small committee who shall be responsible for the whole—who shall either do the work themselves or see that others do it, so far as is humanly possible.

The committee therefore recommends the adoption of the following resolution:

*Resolved*, That the committee appointed to consider the presidential address of Mr. Goggins be continued with authority to make a further report or reports to the Association with reference to any action that should be taken by the Association on any of the recommendations of said address, including therein any cognate questions of the law of evidence not included in the scope of its recommendations; that the committee have authority to increase its membership and fill vacancies therein, and to refer specific questions for examination and report to sub-committees, or to special committees appointed by it; that its report, in so far as it recommends action by this Association be printed and sent to the members of the Association not less than twenty days prior to the next meeting of the Association, and be made the subject of special consideration at the next annual meeting of the Association.

Respectfully submitted,

HOWARD L. SMITH.

MR. SMITH: I may add, the committee regrets exceedingly that its report should have to be of this nature, but under the circumstances explained there seems to be no escape from it.

THE PRESIDENT: The committee seems to have been able to produce a very exhaustive report. I don't think that more time would perhaps have added much to it. What are you going to do with the report, gentlemen?

MR. ESTABROOK: Mr. Chairman, I move that the resolutions recommended by the committee, be adopted.

Motion seconded and unanimously carried.

THE PRESIDENT: The next in order is the report of the Committee on Legal Education. There was a special matter

upon that subject that was left in rather an unfinished state at the last meeting of the Association. Mr. Richards has made a report, a supplemental report, and left it to be presented.

MR. HOWARD SMITH: Mr. President, I see that is set down as the matter for 9:30 A. M. to-morrow morning.

PRESIDENT MARSHALL: Is there anything with reference to this committee on LEGAL EDUCATION except that special feature? I was calling the committee in their order on the program. If not, we will pass to the next order, which is the JUDICIAL COMMITTEE. Gen. Doe is chairman of that committee. I have not seen Gen. Doe. We are going to be somewhat embarrassed by the reports of these committees. I think most of the chairmen are absent. Mr. Bentley was a member of that committee. Do you know anything about it, Mr. Bentley?

MR. BENTLEY: Mr. President, I do not. We had a meeting last year and prepared two bills to be introduced to the legislature, and the one introduced in the senate was presented by Senator Wilcox. The one in the House I don't remember now. Both bills were defeated in the legislature. They supposed, I understood at least, that it was a bill to benefit the lawyers, and consequently that was sufficient to defeat it. It died the usual death. Nothing has been done this year. There has been no meeting of the committee that I know of. The unfortunate condition of Gen. Doe, I suppose, has had something to do with it.

June 24, 1918.

*Hon. R. D. Marshall, Pres., State Bar Association, Racine, Wis.*

DEAR SIR:—It is distinctly a deprivation to me that I am unable to attend the meeting in Racine. I have a wedding in the family, which takes place day after tomorrow, and my presence seems to be needed.

We have had no complaints to the Judiciary Committee, except in minor matters, which have adjusted themselves without action by the committee. I have been away from home for three weeks and have not had an opportunity to get the committee together, although such action was scarcely necessary.

I desire to congratulate the Association on the lack of com-

plaints. It shows that there is little to complain of, so far as the Wisconsin Bar is concerned.

Yours truly,

JOSEPH B. DOE,

(D.-H.)

*Chairman of Judicial Committee.*

THE PRESIDENT: Gentlemen, we will have to pass that order. The next is the committee on AMENDMENT OF THE LAW. Judge Reid is the chairman. Judge Fowler is a member of the committee.

JUDGE FOWLER: Nothing was referred to that committee that I am aware of, Mr. Chairman.

PRESIDENT MARSHALL: No, there was no matter specially referred to the committee, but it was supposed to be an order for them to report if they had any meeting, and desired to present anything.

JUDGE FOWLER: No, we did not have a meeting.

THE PRESIDENT: The next regular order is the COMMITTEE ON NECROLOGY, Mr. Robert Wild is chairman. He is absent.

MR. McMULLEN: Mr. Chairman, I don't know of any meeting having been held by that committee. Not to my knowledge, at least. I have had no information.

THE PRESIDENT: No report from that committee.

SECRETARY MORTON: Mr. President, I will say in behalf of the chairman of the committee, Mr. Wild, that I saw him on the street a few days ago, and he informed me that he would be present and expected to be here. Possibly we will have his report here later.

## COMMITTEE ON THE REVISION OF SECTION 4 OF THE CONSTITUTION.

PRESIDENT: This matter is not featured on the program, but there is a special committee, and Mr. Doerfler is chairman, with Mr. Blake.

JUDGE WINSLOW: Will the chairman tell us what Section 4 of the constitution is?

THE PRESIDENT: It has reference to the payment of fees. The report before was signed by Christian Doerfler and Chauncey Blake. The resolution referred was, Resolved,

that Section 4 of the Constitution of the Association be and the same is hereby amended by substituting in lieu thereof the following:

Section 4. All members of the Association who have paid dues for 15 years or more, shall be active members of the Association, but shall not be subject to the payment of annual dues or assessments. The Executive Committee of the Association may from time to time recommend for election by the Association as honorary members, any member or non-member of the Association, such recommendations to be based upon some special service or distinction of such proposed honorary member, and such person when elected shall become an honorary member of the Association and shall be exempt from the payment of all dues and assessments. All members of the Association who have heretofore been elected as honorary members by reason of having paid dues for a period of 15 years, from and after the passage of this amendment shall be considered active members exempt from further payment of dues and assessments.

Any member of the Association may for special reasons on notice of a member of the Association, be relieved by the Association from the further payment of dues and assessments. All active members relieved by this section or the Association from the payment of dues and assessments and all honorary members may participate in all the deliberations of the Association except as to financial questions.

All provisions of the Constitution in conflict herewith are hereby repealed.

MR. DOERFLER: Mr. Chairman, I move that the consideration by this convention of this report, be deferred until some time to-morrow, and the committee in the meantime will have a meeting and make further recommendations.

THE PRESIDENT: I will take that as the sense of the meeting unless objection is made. That special committee, by some oversight, was left off the program. I think that goes through with all of the formal matters. Do you think of anything, Mr. Secretary?

SECRETARY MORTON: Mr. President, I think that there should be appointed a Resolutions Committee. I have one or two resolutions that have been presented to me, and there may be others. I think a Resolutions Committee should be appointed at this time, to whom these resolutions can be re-

ferred, together with any others that might be presented. I move that such committee be appointed.

MR. ESTABROOK: I second the motion.

Motion unanimously adopted.

THE CHAIRMAN: I will appoint Judge Fairchild, Mr. Kearney and Mr. Eastman.

SECRETARY MORTON: Mr. President, in order that it may not be forgotten, I would like to move at this time that all lawyers, members of the Association, who are in the service of the Government, be excused from dues during that service.

THE PRESIDENT: I think, Mr. Morton, that that was made part of this report. Something of that kind was referred to in that report.

SECRETARY: It said that it might be done.

PRESIDENT: I take it as the sense of the meeting that that should be referred to this committee of which Mr. Smith was chairman. Is there anything else before the meeting? The address of Mr. Vance was not to come up until 4:30.

JUDGE FOWLER: There is a discussion down here on the program.

THE PRESIDENT: Oh, yes. I am a little afraid we will hardly have time to exhaust that discussion, but we can enter upon it and suspend when the time comes. This is a discussion of the question of, Should trust companies be prohibited from seeking employment in the making of wills, and administration of estates. That discussion was to be led by Mr. Doerfler. We will take it up now.

MR. DOERFLER: Mr. President, and Gentlemen of the Convention. Perhaps I would occupy more time than could be allowed to me reasonably at this time, and I will therefore, skip some of the matters which I have in this paper.

(For Address see Appendix, page 587.)

MR. DOERFLER: I have here quite a number of these objectionable advertisements, and they are but a small fraction of those which have come under my notice, and I know under the notice of most of those who are here at this meeting. I thank you.

THE PRESIDENT: We have reached the order of business of the delivery of the address by Mr. Vance, but there will be ample time of two hours before the dinner hour. I think we will conclude this discussion. Mr. Jones will reply to Mr. Doerfler.

For address as revised, see appendix, page 605. Address was delivered extemporaneously and afterwards revised by permission of Association.

**PRESIDENT MARSHALL:** Prof. Vance will please come forward now and we will listen to his address. I now present to you Prof. Vance, Dean of the Law School of Minnesota, who will deliver his address to us on the subject "THE IMPERATIVE NEED OF INTERNATIONAL ORGANIZATION."

**PROF. VANCE:** Mr. President and Gentlemen of the Wisconsin State Bar Association: This environment is a little bit too suggestive of a pulpit for the entire comfort of a lawyer, but perhaps it is just as well that it should be, because I never in all my life felt more like preaching a sermon. I would be perfectly willing to preach a sermon or exhort, or do anything else if I might bring it about that the great issue that I want to present to you would grip your minds and imaginations in the way that it has seized mine and many others. I want to assure you, Gentlemen, that no subject that will be presented before your body, and indeed no issue that can be brought before any audience in this entire country or anywhere in the world compares in significance and deep-cutting importance with the issue that I want to try to present to you this afternoon. And yet, Gentlemen, the presentation of this issue is embarrassed by the fact that almost invariably it is accompanied by misunderstanding. The reason for that misunderstanding was well expressed in a conversation which I overheard in a street car in the City of Philadelphia when, a month ago, I was in attendance upon that great Win-the-war Convention of the League to Enforce Peace. These two thick-necks that were sitting in front of me were evidently discussing this convention, as I was on the car riding to the hall. One of them says "What the hell is this convention about, League to Enforce Peace?" The other replied, "Oh, its a lot of damn preachers and college presidents that are trying to add a yellow streak to the American flag."

Now there is no doubt about it that there is a general impression abroad that somehow that is the purpose of this so-called Society for the establishment of a League to Enforce Peace, but anyone who was present at that great convention in which there sat some 5,000 delegates, coming from all parts of the United States, and indeed, from remote parts of the

world, would not have any doubt at all as to its character, because never in my life have I sat in a convention which was so fiercely warlike as was that one. The unity of purpose of the American people in the prosecution of this great war for world democracy is inspiring. Their determination not to allow anything whatsoever, however important in itself, to divert them from winning the war as speedily as possible, is actually splendid. I suppose, therefore, that we ought not to be surprised, and certainly should not complain if this national spirit has brought about an attitude of some intolerance in some quarters of any purpose or disposition to consider during the time of the war, any of the conditions of peace, or what we are going to do with peace after we have finally won it, as win it we will. But that is of course the wrong point of view. We that have thought this thing out realize how greatly we have been handicapped by the great emergency that has come upon us by the lack of some well thought-out plan to unify national action and national thought, and we are not going to be caught again by any such unpreparedness as we have been suffering from during the last year. And believe me, gentlemen, although we can all sympathize with the eat-em-alive orator and the militarist—and those undoubtedly can bring applause from a chance audience—yet it is not that kind of men who are going to see this war through in spite of all its privations and sacrifices that it is going to impose upon the American people. The people that are going to see this war through are the people who think it through; and our purpose is to think through what we are aiming at. In other words, it is our duty, just as we should in time of peace have laid careful plans for a war that might have come upon us, although we did not believe it would come, so in time of war it is our duty to think through this matter and to prepare ourselves for the coming of peace when it does come, when we conquer. Now if there are any of you who are still under the impression that somehow it is unpatriotic to consider what we are going to do with the peace that we are going to conquer after we have won it, I would commend to you the story that is told of the famous merchant prince whose great place of business was hopelessly on fire. His business associates sought him to extend to him their sympathies and their offers of aid. To their great surprise they found him in the office of an architect busily engaged in making plans for a still greater



and better place of business. Now I think that we all agree that the old world order is afire. It is fast falling in ruins. If any man here believes that when the curtain does finally fall upon this war that it is going to rise again upon the old world order as we knew it, he had better think again. There is going to be a new world, and we had better be making plans during the conflagration of our own world for a new and better world order that is to come after. If we make no plans, what will happen at the end of this war? The most careless reader of history can make answer. The practical statesmen they have in charge will do the same thing that practical statesmen have always done heretofore—”

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(For Address see Appendix, page 516.)

The reading of the address was received with loud and prolonged applause.

PRESIDENT: Mr. Thompson has an announcement to make.

MR. THOMPSON: On behalf of our Entertainment Committee we have around the hall here and around the hotel certain automobiles that are labeled “Wisconsin State Bar Association Convention Cars.” Those cars are at your service. You can take those cars and go anywhere within reasonable limits that you desire, as our guests. They are absolutely free and at your service. That is the first point. The next point is, we want this convention this evening and to-morrow evening to be as big a success as it has been this afternoon, and I have been requested to say to the gentlemen who have come to us from Milwaukee, and perhaps further north, that you can get home on the train that goes through Racine at 9:37, another train that goes through at 10:33, and another train that goes through Racine at 11:29, the North Coast Limited that stops here. Furthermore, you can leave town if you are going home at night, on the North Shore Line, what we know as the Chicago & Milwaukee Electric that you can get by Washington Ave. car going west at 9:34, 10:34 and 11:34. Our Entertainment Committee asked me to state this to you gentlemen particularly in connection with an invitation that you bring down the ladies of your families to-morrow for our little war dinner, or our war supper, and in addition to getting home by these means that I have described late in the evening we have our M. R. & K., as we

call it, that leaves the hotel at 10:10 at night, and about ten minutes after the hour, and of course our Kenosha friends know they can get up and back any time they want.

THE PRESIDENT: I wish you would all bear in mind the address that is to be delivered this evening by Justice Rosenberry on this subject "War, the Test of Democracy." You will find it a good supplement for the very instructive address we have listened to from Prof. Vance.

MR. KEARNEY: Mr. Chairman, I desire with the permission of the Association to move a vote of thanks to Prof. Vance for his very interesting and instructive address to us this afternoon, and to assure him that he will carry with him wherever he may go the best wishes of the lawyers of Wisconsin.

Motion duly seconded and unanimously carried.

Recess until 8 P. M.

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Elks Club, 8 P. M.

Justice M. B. Rosenberry of the Wisconsin Supreme Court was introduced by Pres. Marshall and gave his address on "War, the Test of Democracy."

(For Address see Appendix, page 532.)

Recess until 9:30 A. M., June 27th.

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9:30 A. M., June 27th.

Reading of Secretary's report—

## REPORT OF SECRETARY.

June, 1918.

Another year has rolled by since our gathering at Madison and the Great War still rages, and by the Central Powers at least, with increased fury, in order to try to gain a decisive victory before America can have time to make it forever impossible. If Germany knew America as she thinks she does, she would know now that victory for her is an utter impossibility. America is in this war to win, and is going to win, whatever the sacrifice. America has awakened since we last met. Her supreme business now is war—as the President said—force without stint or limit until our aims are accomplished.

The great mass of Wisconsin lawyers have in this crisis been leaders and loyal workers in support of their government,—regardless of politics or any selfish interest. Hundreds have devoted time and money without stint and without thought of reward to such service of the government as came to them to perform. They are ready for such further sacrifice as the Government may ask. Many of our best young lawyers have gone to the front and are making enviable records. They should be recognized by us appropriately and kept in good standing. A list of members of the Association who are in the army and navy should be compiled for publication in the permanent volume. Best of all we should sustain their spirits and arms while they fight our cause. Wars can be won without great sacrifices. We must prepare the people to meet those sacrifices with heroic and unflinching devotion to the cause of humanity.

#### COUNTY ASSOCIATIONS.

In view of the drain on our Association by the taking away of the younger blood for duty in the war, more effort should be made to fill up the ranks and even greatly enlarge the Association. There should be a campaign for membership in every county in the state and every county or circuit, at least, should have a local Bar Association. Every practicing lawyer should be a member of both the local and state Bar Association. There should be no better recommendation for a lawyer than such membership and that sentiment should be enlarged.

#### AMERICAN BAR ASSOCIATION.

We have been pressed by the American Bar Association for closer relations with it and a working plan has been adopted. It seems however to lack an important essential, the making membership in the National Association dependent on membership in the state associations. We have the condition in Wisconsin of many lawyers paying \$6.00 per year for membership in the American Bar Association who do not deem it worth while to belong to our State Bar Association. This does not seem fair to the State Bar Association, and I would recommend the adoption of a resolution to the effect that membership in the American Bar Association should be made

dependent upon the membership in the State Bar Association.

I am sure that the State Bar Association should also make it necessary to membership that a member have and maintain his membership in a local County Bar Association, if there be one in his county.

#### LAND TITLES.

I wish to bring to the attention of the Association a system recently originated by J. F. Woodmansee of Milwaukee for registering deeds and other instruments, and of keeping records of proceedings affecting titles of land, bringing all of them together in one office, there rendering them easily accessible for ascertaining with certainty the condition of titles to lands.

This system has already been referred to a committee of the Milwaukee Bar Association and I believe it is of sufficient importance to warrant investigation by a committee (general or special) of this Association to report to the Executive Committee,—with power in the Executive Committee if it deems it advisable to take such action as to securing it to be adopted in whole or in part in Wisconsin as seems desirable.

#### GOVERNMENT WAR ACTIVITIES.

We were asked by the representatives of the government to give place on our program to its work and the subject "War Savings" was added. The other appeal on the subject of "Social Hygiene" come too late to arrange.

#### REPORTS.

The report of 1917 is in your hands and under the action taken in 1916, a permanent volume is to be published this year, comprising 1916, 1917 and 1918.

#### AMBULANCE CHASING.

Our efforts in the past on this subject have been both encouraging and discouraging. Bills have been passed by the Senate in two legislatures. Another soon sits. I believe this subject should be again pressed to their attention and that

there should be given to the committee the money with which to meet its expenses. Co-operation with the Minnesota Association in this matter, that similar action be taken in both states is especially desirable in view of the showing of the activities in Wisconsin of St. Paul and Minnesota lawyers in this matter.

I shall have to ask the Association to be considering a successor to the undersigned as I feel certain I shall be unable to continue the work after this year, even if I can fully complete this one.

Respectfully submitted,

GEORGE E. MORTON, Secretary.

**THE PRESIDENT:** Gentlemen, what will we do with the Secretary's report? It contains a great many suggestions and matters perhaps outside of the strict work of a Secretary's report. What will you do with the report? If no suggestion is made the report will be placed on file.

**MR. EASTMAN:** Mr. President, I do not know what the methods or practices of the Bar Association are, but it seems to me that there are some suggestions made in that report which are very material, and that something should be done with them rather than simply place it on file. I don't know if that is to be taken up later, but it seems to me, sir, that the recommendations with regard to membership in the Bar Association being necessary before a membership in the American Bar Association could be had, should be considered, and that this matter should be referred to a committee, and other matters suggested by the Secretary, to report at the next meeting. I make that motion, that the report and recommendations of the Secretary as embraced in this report, be referred to a committee to be appointed by the President of the Bar Association, to report at the next annual meeting.

**THE PRESIDENT:** Before that motion is seconded or put, I would like to make the suggestion that I find from an examination of the record of the Association, that it has been customary to take up all such matters, and to adopt some resolution or motion to leave it to a committee to consider and report at the next meeting. That has been made a kind of graveyard for all these resolutions. A large proportion of those references were never called up afterwards. I have found, I think, six or seven that were called up in that way, and never

heard of afterwards. It seems to me if it be a reference it better be to the committee that we have on resolutions, and have them take it right up and make a report and come in as part of the business of this meeting and dispose of it. We have a Committee on Resolutions.

BY THE SECRETARY: Judge Fairchild is chairman.

THE PRESIDENT: I will listen to a second to the motion with that suggestion that I made. I think there are 5 or 6 undisposed of matters that will never be called up.

JUDGE FOWLER: I move that it be referred to the Committee on Resolutions. I make that as an amendment, to report at this meeting.

MR. EASTMAN: I accept that amendment.

Motion carried as amended.

BY THE PRESIDENT: It is referred to the Committee on Resolutions of which Judge Fairchild is the chairman.

BY THE SECRETARY: There have been referred to me several matters here that ought to go to this committee on resolutions also. There is a resolution offered by one of our members who is not present, but who writes me the letter as to the subject matter, and a proposed resolution which he desires to have acted upon by the State Association. I have also drafted here a resolution on the question of the requisite of membership in the State Association, which I also desire to present and have considered by this committee, if that committee will take these. General Estabrook has also handed to me another resolution which goes with it.

BY THE PRESIDENT: I will suggest that those resolutions should come in by motion. Somebody should make a motion on the resolution. If we adopt the practice of letting any person who desires to send a resolution to the secretary, and they are all to be taken up and referred without any motion by anybody, it would encumber the record and encumber the committee with more work than they can ever attend to. Do you make a motion on the matter which you present personally.

BY THE SECRETARY: I will move then that this resolution be adopted by this Association:

*Resolved*, That it is the sense of the Wisconsin State Bar Association that the constitution of the American Bar Association should be so amended as to make eligibility therein dependent upon membership in the local State Bar Associa-

tion where the applicant resides, and upon the maintaining of such membership.

THE PRESIDENT: Unless objection is made it will be referred to the Committee on Resolutions.

GENERAL ESTABROOK: Let the Secretary read my resolution, or refer it without reading.

BY THE PRESIDENT: Unless a motion is made to that effect I will not make any reference unless somebody presents a resolution to be adopted.

BY GENERAL ESTABROOK: I present that resolution.

BY THE PRESIDENT: Read it.

(NOTE—Resolution read, but later withdrawn by Mr. Estabrook, so is not printed.)

BY THE SECRETARY: At the request of Mr. E. J. Hammer of Hillsboro, I move the adoption of this resolution presented by him:

“Section 4052a should have added to it the following: No person should appear and act as an administrator or executor of any estate exceeding \$1000 in value and conduct the proceedings for the administration thereof in any probate court of the State of Wisconsin except by a duly licensed attorney of said court, unless said administrator or executor shall be a regularly licensed attorney of said court or of the Supreme Court of his state.”

BY THE PRESIDENT: Unless objection is made it will be referred to the Committee on Resolutions.

BY THE SECRETARY: I also desire to offer this resolution:

*Resolved*, That this Association recommends to the State Bar examiners that in determining the question of the admission of applicants to the Bar in addition to the attention paid to the question of the character of the applicant it make disinterested independent investigation as to his disposition to conform to the ethics of the profession as established by the American Bar Association and by this Association, as well as the provisions of the statute relating thereto.

BY THE PRESIDENT: Unless objection is made, the same reference. Is Judge Fairchild present? Does anybody know whether he will be here?

MR. GOGGINS: Judge Fairchild will be here this afternoon.

THE PRESIDENT: Mr. Kearney, we have a bunch of resolutions here. I suggest you take charge of them, and if practicable, time enough be put in in considering them and make

a report so that they can all be disposed of finally, and not encumber the record by laying them over to the next annual meeting.

THE SECRETARY: There is nothing else on the table here, Mr. President, except a letter which has come from Mr. Wild, the chairman of the Committee on Necrology, and the report of Mr. Richards.

THE PRESIDENT: That is the next regular order. That is the matter which was to come up at 9:30 o'clock in the regular order. That is one of the matters that came up and was partially discussed and laid over in a very indefinite way. It was the third time, I think, it had been laid over, and it was thought best to make a special feature of it on this program, and have it brought up again and disposed of finally. Read the report.

SECRETARY: I would like first to read this letter of Mr. Wild,—

George E. Morton, Esq.,  
Secretary of the Wisconsin Bar Ass'n.,  
c/o Elks' Club,  
Racine, Wis.

Dear Sir:

Circumstances prevent me from attending the convention.

On behalf of the Necrology Committee, I beg to state that the method which we have heretofore pursued in reporting deaths of fellow-members of the Bar Association, was rather haphazard, in that we were in the habit of merely mournfully scrutinizing the columns of the daily papers for our information. In several cases, I know, we came to grief, because of false reports. It is, therefore, our plan to be in communication with the different Clerks of the Circuit Courts throughout the State, so as to be in a position to make accurate necrological reports from time to time. I am assured that before the proceedings of the instant meeting go to press, we will be in a position to make a complete report covering the time since the meeting at Superior, it being our intention to furnish short biographies of each of our deceased brethren.

Respectfully,

ROBERT WILD,  
Chairman.



PRESIDENT: Does the Association desire to do anything with reference to the report on necrology?

JUDGE FOWLER: Mr. President, I move that the report of this committee when received by the Secretary, be printed in the regular proceedings of this meeting.

PRESIDENT: I assume that it is the sense of the meeting and that it is seconded.

Motion adopted.

THE PRESIDENT: Now the supplemental report.

Supplemental report of Committee on Legal Education, read by the Secretary.

(Found on pages 191-196, this report.)

THE PRESIDENT: I presume most of you remember that the report was presented at the last meeting, and part of recommendation No. 1 was taken up for discussion. Perhaps half of the discussion of the entire annual meeting was taken up with discussing that part of the recommendation No. 1, which reads as follows: "All applicants for registration as law students shall present to the Board prior to such registration, proof that the applicant is a graduate of a 4 year High School, and that he has had at least 2 years of study in a college or university in good standing, or that his achievements are the equivalent of such courses."

That was discussed at considerable length, and then was laid over in some indefinite way. I could not understand from reading it what the real purpose of the motion was, but the discussion stopped at that point. The Executive Committee thought best to feature that subject at this time, and finally dispose of it. This is the 4th time, I think, it is brought up. Certainly the third time. A very elaborate report was made, and nothing has been done with it which makes any headway towards disposing of the subject.

Mr. Smith, do you desire to say something with reference to the matter?

MR. HOWARD SMITH: I think the president is mistaken in saying this is the third or fourth time this matter has been brought up. The recommendation of the committee was only made to the Association in 1917. The President doubtless has in mind other recommendations which have been made by the committee, because this has been an active committee; it has never hesitated in bringing matters to the attention of the

Association that it was thought the Association ought to be cognizant of, and to make its recommendations. The recommendations made in 1917 were, as has been stated by Mr. Richards, and I must call the attention of the Association, again to the fact that it is not the report of the committee, but a mere statement of the chairman. The recommendations of last year were quite fundamental. During the discussion it developed that the whole matter was under discussion or consideration by the American Bar Association, under an impulse to adopt a model form of legislation on the subject which might, in the hope of its sponsors, at least, be adopted by all the states, and become a uniform regulation on the subject of admission to the Bar. When that fact developed in the course of the discussion, that the very matter under discussion was under reference at the time to the committee of the American Bar Association, it was thought best by this Association to postpone its further consideration of the matter until the American Bar Association had passed upon the same subject under consideration before it. It was with that purpose, I feel quite sure, that the resolution was laid upon the table. Now the committee of the American Bar Association did report at the last meeting of that Association, but the matters that it reported upon were passed upon only in one respect: the appointment of a council of legal education. The other matters were laid over until the coming meeting of the American Bar Association, to be held at Cleveland the latter part of August, and they are to be the subject of special consideration there. In other words, exactly the same reasons exist for postponing action by this Association now, that existed last year. The Association I think, need have no fear that this matter will drop into oblivion, as so many matters that have come up here and are referred to committee do, because this committee has always been an active committee. I think the records of the Association for several years past will disclose that we have always had something to say or to recommend that is of benefit to the Association. In view of the course adopted of not having any meeting or taking any action in the matter for the reason that the matters are still under consideration in the American Bar Association, it would seem to me that the proper and the inevitable thing to do at this time would be to file the report or the statement of the chairman of the State Association, and leave the matter

with the committee for their further consideration and action after the American Bar Association has passed upon this proposal. That would be my suggestion, and I move that the statement of the chairman be received and filed, and the committee be continued in charge of the matter until such time as they may be able to make an intelligent report, in view of the anticipated action of the American Bar Association.

THE PRESIDENT: I want to make a correction. I do not want to be understood that this formal report that was referred to has been two or three times laid over. The general subject has been brought up for discussion, and it was the result of the committee's work I think the year before we met at Madison. There was no formal report, because the committee did not get together, but there was some verbal report, and some discussion. This formal report was made first as Mr. Smith suggests. I had a long consultation with Mr. Richards about this matter before he left for the Pacific Coast, and I understood from my discussion with him that he would like to have the matter disposed of in some way, although he did suggest that it be laid over again. The general subject has been brought up for discussion several times, as I remember. It is a contest going on with reference to this subject of requisites for admission to the Bar that will not down until the Association takes some decided action on it.

BY JUDGE WINSLOW: Mr. Chairman, this is a subject which is certainly of importance and deserving of careful consideration. Anybody who has been, as I have been, compelled to consider the subject of the appointment of a Board of Examiners, and to give them their instructions, will realize that it is a pretty important question as to any changes being made in the present system. We do not all agree with reference to that system, with regard to the recommendations of the committee, I think. If it be the fact as stated—and of course there is no question but what it is—that the American Bar Association is considering that question, it seems to me that this Association should certainly wait until they find out what the American Bar Association, the great mother association, has done. We are more and more getting to the point, I think, in this country, where we want to be uniform, if we can, and not have one practice here, and another practice there. I would like myself very much to know what the American Bar Association decides it should be, before we

pass upon this, and it seems to me we are not dealing here with a committee which is moribund or dead, or sleeping at the post. We are dealing with a committee which has the subject under consideration, and here it seems to me, is a very reasonable suggestion, that we should wait until the American Bar Association has made its report. I second Dr. Smith's motion.

Motion unanimously adopted.

THE PRESIDENT: The next order of business is the address of William A. Hayes, on the subject "The Purposes, History and Present Program of the American Bar Association."

BY MR. HAYES: I assume, Mr. President, that you had some purpose in thus stating the subject assigned to me, and the order of its different branches. When you sat on the high seat of justice I obeyed your mandate. Now I will respect your wishes and proceed accordingly.

(For Address see Appendix, page 566.)

THE SECRETARY: Mr. President, under the rule that you established in order to have a resolution presented to the Resolutions Committee, I desire to offer one at this time without reading it, if I may, on the subject of the requesting of the President to call a conference upon the question of a world organization.

BY THE PRESIDENT: It will be received and referred to the Committee on Resolutions. I think that Mr. Hayes is entitled to the thanks of the Association for the very thorough manner in which he has performed the duty assigned to him by the Executive Committee of addressing us on the subject of the progress, history and present program of the American Bar Association. On behalf of the Association I express to him the thanks of all its members.

We have had quite a long session. We had better rise now for a few minutes before we proceed to the next order.

(A recess of ten minutes was thereupon taken.)

BY THE PRESIDENT: I think, Gentlemen, it would be well for you to move to the front as much as you can so that you can thoroughly enjoy the address we are about to listen to. Gentlemen, we have with us an eminent citizen and lawyer of the State of Massachusetts, a graduate of Harvard and of its College of Law, who was closely connected with that great institution of Harvard for many years. He was private sec-

retary for Charles Sumner for a while, and wrote a history of his life. He has had 50 years experience as a lawyer, and in literary work, been an editor of the *American Law Review*, and a president of the American Bar Association. He has a wide reputation as a lawyer, scholar and author. He will deliver an address to us on the subject "THE NEGRO QUESTION."

JUDGE STOREY: Mr. President, I was very much interested in listening to Judge Rosenberry last night, and hearing him say that among the things which is to make Democracy secure in this country is a little less care for our own interests and a little more thought of our neighbors. He also urged that we lay aside our tendency to exclusiveness and associate more constantly with our neighbors who to us now are strangers. He apparently had in mind those of our citizens who come from foreign extraction; and in his reference to Mrs. O'Grady and to the Italian neighbor, I gathered that those were the classes that were in his mind. I come now to ask for justice to another class of our fellow citizens. There are in this country today from ten to twelve millions of native Americans, entitled under the constitution and laws of the United States to every right that any American citizen enjoys, and protected against hostile legislation in any state by the 14th amendment. Yet all over the country their rights are ignored, and they are subjected to indignities of every kind, simply because they are negroes. The constitution expressly provides that the right of citizens to vote shall not be denied or abridged on account of race, color or previous condition of servitude. Yet in many states this provision is set at naught. The negroes have felt the murderous violence of the Ku-Klux clan. They have seen brutality followed by fraud when elections were carried by tissue paper ballots.

(For Address see Appendix, page 490.)

(Great applause.)

THE PRESIDENT: The gentlemen will keep their seats for a moment. Mr. Sanborn is asked to make an announcement.

MR. SANBORN: We sent out an announcement to all of the members of the legal advisory boards asking for a private conference at 1:30 this afternoon, and I would like to have all persons who are interested in the work of the legal advisory boards and the administration of the selective service law present at that time. I don't think we will take so very long,

but there are some matters which I would like to bring up. I think we will meet here and we can get through before the regular meeting.

MR. KEARNEY: Mr. President, it seems from the history of our Association that we are prolific in suggesting very important steps and are as prolific in forgetting to continue in any given direction, or in attempting any particular good. We have just listened to one of the most instructive and one of the greatest addresses ever delivered to a gathering of attorneys. We of Wisconsin are in sympathy with justice. We believe in its administration to all—to rich and to poor, to high and to low, without reference to race, color or previous condition of servitude. We should take action on this splendid address. We ought to formulate something here of a definite and distinct course to be followed in furthering the great purpose which must be in the mind of every good citizen, that of establishing justice at home, while we seek for justice in the world at large. I therefore move you, Mr. President, that the matter and the subject of the address just delivered, be referred to a special committee to consist of Hon. John B. Winslow, the Chief Justice of the Supreme Court of our state, Mr. John M. Whitehead, of Janesville, and Mr. Burr W. Jones, of Madison, for consideration and for such recommendation in the future as may enable us to do our part in the great work that we have to perform if we are to accomplish anything more than merely being auditors at an occasion like this.

Motion seconded.

THE PRESIDENT: You have heard the motion and the second. Let me suggest to Mr. Kearney, wouldn't it be well to name some time when the committee is to report, and not let that go on file to be reported a year from now. I presume some such committee as you have suggested could draw a resolution upon which we could act and report it perhaps, this afternoon.

By MR. KEARNEY: I prefer, Mr. President, to leave that matter to the committee, but I suggest that the report be made not later than at the next annual meeting of this Association.

Motion unanimously adopted.

Recess until 2 o'clock.

Elks Club, 2 P. M., June 27th.

Meeting called to order by the President.

**THE PRESIDENT:** Gentlemen, we have with us an eminent member of the Chicago Bar, Mr. Albert M. Kales, who will deliver us a very interesting address on "The Selection and Retirement of Judges." He is a man of large experience in educational work, a graduate of Harvard, and I know that he will interest you very much in his address on this very important subject.

**MR. KALES:** Mr. President, and Gentlemen of the Wisconsin State Bar Association. Emerson, as reported this morning, said that every great reform was once an idea in the mind of a single man. Fortunately for us, every idea in the mind of a single man has not been ultimately carried into a great reform. However, you never can tell, and with these cautionary statements I introduce my address. It is called in the program, "Methods of Selecting and Retiring Judges." Perhaps it ought to have been called "The Popular Election of Judges," because the address deals mostly with what is familiar to us in this part of the United States as the popular election of judges. What does it mean, and what results in general do we get from it? It is most important at the outset to distinguish between selection and retirement of judges. I think the greatest difficulty with the entire subject is that the selection and retirement of judges have been consolidated into a single question. The matter has been treated as if they were one and the same thing; as if the function of selection and the function of retirement could ordinarily be handled at the same time without distinguishing between them.

(For Address see Appendix, page 552.)

**THE PRESIDENT:** There is a good deal of work yet to be done to unload the balance of this program. I don't see how we can depart from the regular order of the program, because it is prescribed in the by-laws of the Association, although I am taking the responsibility of departing from it somewhat for the purpose of expediting business. The next order on this program is the address by Mr. Gillen, on the subject, "War Savings." (For Address see Appendix, page 615.)

**THE PRESIDENT:** If you will be a little patient I think we can run off the balance of this work pretty rapidly. The

next is the supplemental report on membership. Have you that ready?

**MR. PARKER:** Mr. President, the committee has received and reports with approval the application of Mr. Max W. Heck, of Racine, Mr. Max Schoetz, Jr., of Milwaukee, Mr. Alexander Wiley, of Chippewa Falls, Mr. J. L. Kelly, of Wausau, Mr. Samuel M. Smith of Janesville; and asks leave to put those names, if approved by the Association, into the report of the committee made yesterday.

Motion duly seconded and unanimously adopted.

**THE PRESIDENT:** The report of Mr. Doerfler's committee. Is he present?

**MR. DOERFLER:** Mr. President, there is no other member of my committee that I have been able to find present at this meeting. I will read that report as it was practically agreed upon by 2 out of 3 of the members of that committee.

"Your Special Committee appointed to consider the advisability of a revision of Section 4 of the Constitution of the Association, do hereby report as follows: Your committee are of the opinion that all members of the Association who have paid dues for more than 15 years shall be considered or remain active members of the Association, and shall not be subject to the payment of annual dues or assessments. Your committee are further of the opinion that it is desirable to maintain as large and active a membership of the Association as possible, and we therefore recommend that honorary membership shall be confined to such members or non-members who by reason of special service or distinction are recommended for honorary members by the Executive Committee of the Association, and whose recommendations are adopted by the Association. We therefore submit and recommend the adoption of the following amendment to the constitution:

*Resolved*, That Section 4 of the constitution of the Association be and the same hereby is amended by substituting in lieu thereof the following:

Section 4: All members of the Association who have paid dues for 15 years or more shall be active members of the Association, but shall not be subject to the payment of annual dues of the Association. The Executive Committee of the Association may from time to time



recommend for election by the Association as honorary members any member or non-member of the Association, such recommendation to be based upon some special service or distinction of such proposed honorary member, and such person when elected shall become an honorary member of the Association, and shall be exempt from the payment of all dues and assessments. All members of the Association who have heretofore been elected as honorary members by reason of having paid dues for a period of 15 years from and after the passage of this amendment, shall be considered active members, exempt from further payment of dues and assessments. Any member of the Association may for special reasons on notice of a member of the Association be relieved by the Association from the further payment of dues and assessments. All active members relieved by this section or the Association from the payment of dues and assessments, and all honorary members may participate in all the deliberations of the Association except as to financial questions. Members of the Association who now are or hereafter shall be engaged in the active service of the United States in the present war shall be exempt from the payment of Association dues and assessments while such service continues. All provisions of the constitution in conflict herewith are hereby repealed'."

I will say this amendment, as I understood it, was joined in by Mr. Blake, at the last meeting of the Association, but I have been unable to see him or find him, and the third member of the committee I have been unable to meet. So I recommend the adoption of this proposed change in Section 4 of the Constitution.

PRESIDENT: Gentlemen, you have heard the report. What shall be done?

JUDGE WINSLOW: I move it be adopted.

MR. HOWARD SMITH: Mr. President, I have no objection to the report so far as I understood it, except that portion of it which relieves from payment of dues those who have been members of the Association and paid their dues for 15 years. I belong to that class, so that I can be heard to object to it without any invidious construction being given to my motives. If this Association had any large income so that it could do half or one-quarter of the things that it wants to do, this

recommendation might be well enough; but the limitation of 15 years membership for payment of dues, it strikes me in view of the existing financial conditions of the Association, is unwarranted. I do not want to be relieved from payment of dues. I think that motion, if carried, would relieve from payment of dues perhaps half of the people in this room at the present time, leaving the financial burden of maintaining the Association to be borne by its youngest members. The dues of this Association are petty as compared with the dues of many like organizations. I should deem it extremely unwise to put the limit as low as that. If it were 25 years I should not say a word, but 15 years would seem to me too low. I move you, Mr. President, to amend the recommendation by inserting the word "25" in lieu of "15."

JUDGE FOWLER: I second the motion, Mr. Chairman.

THE PRESIDENT: Gentlemen, you have heard the motion that the report be amended by 25 being substituted for 15. As many of you as are in favor of the motion to adopt this amendment, say "aye."

Motion carried.

PRESIDENT: Now on the resolution as amended. I will put that motion. It has been seconded.

Motion adopted unanimously.

JUDGE WINSLOW: Mr. Chairman, I have a report of the Special Committee which I would like to make. It is a report of the committee appointed to report on Mr. Storey's address. Mr. Whitehead wrote this report, and wrote it quite rapidly, and I have changed it considerably, and I may find it difficult to read.

## REPORT OF COMMITTEE ON STOREY ADDRESS.

"Your committee, to whom was referred the notable address of Hon. Moorfield Storey, on the "Negro Question," with a view to having an expression from this Association upon the evils which were so graphically outlined in the address, have given the matter such attention as the brief time at our disposal will allow. We have been deeply impressed by Mr. Storey's address and while we realize that it is not possible to formulate an adequate program of action on this great subject on the spur of the moment, we are ready, nevertheless, to express and do while yet under the spell of our

speaker's eloquence, hereby express our unqualified condemnation of the mob violence which has occurred and wherever in our land it has occurred, toward the colored race. It is a time when all the civilized world is profoundly shocked by the cruel and inhuman treatment of the weak and inoffending, by the strong and brutal hand of the oppressor, but we have to-day been told of things done in our very midst to our colored fellow citizens that are no less barbaric than the heart rending treatment of the little peoples of the old world by their oppressors. We shall reap the whirl-wind, if we continue to sow the wind, and as lawyers and judges, who are sworn to uphold and administer to law, let us at once pay heed to the solemn warning that the words of Mr. Storey have sounded in our ears. The acts of violence to this unfortunate race tend to make us indifferent to acts of violence to other races and peoples.

The fair name of more than one American community has within recent months been indelibly stained by these outbursts of race hatred and bigotry. It is high time that we invoke the law and suppress the rule of the mob.

We should, as lawyers, therefore, pledge ourselves to uphold and inculcate among our fellow citizens, respect for law and respect for the legal rights of all members of our communities, while we are crying out against the wrongs of peoples and races upon the other side of the Atlantic. We ask, Mr. Chairman, that a place be made in the program of our next meeting for the report which we shall then endeavor to have ready, in which we shall hope to give adequate expression to our hatred of that lawless disregard of the political and social rights of the colored race, which has long disgraced us as a nation, and to suggest methods by which this protest may be made more effectual in the way of influencing public opinion throughout the country on the subject.

Respectfully submitted,

JOHN B. WINSLOW,

Chairman Special Committee.

MR. EASTMAN: Mr. President, I wish to suggest, more as a request than otherwise, that the word "conqueror" be stricken from that report, and "oppressor" inserted. We do not want to recognize that Germany has conquered anything or anybody, because Belgium she certainly has not, and never will conquer. She may oppress her.

JUDGE WINSLOW: That is Mr. Whitehead's word. He is not here now. I am willing to have it stricken out.

THE PRESIDENT: I think the senator would be perfectly willing to have the word stricken out. Shall we consider the word stricken out, Mr. Chief Justice?

JUSTICE WINSLOW: Yes, it is stricken out.

MR. EASTMAN: I move the acceptance of the report, and that it be placed on file.

Motion seconded and adopted.

JUDGE WINSLOW: Do I understand that the recommendations of the committee are adopted?

PRESIDENT: Perhaps another motion to adopt the recommendations of the committee, would be in order.

MR. HICKOX: I move the adoption of the recommendations.

Motion carried.

PRESIDENT: Is the Auditing Committee ready to report?

MR. JONES: Mr. President, we have examined the vouchers and records of the treasurer, and find them correct. While I am on my feet I desire to make a motion that the thanks of this Association be tendered to Mr. Storey and Mr. Kales for the very able addresses they have given us.

JUDGE WINSLOW: I second the motion.

Motion adopted.

PRESIDENT: I would like to suggest to the members of this Association something perhaps that is not in the minds of all of them, that I think that that provision of the State of Massachusetts relating to the recall of judges by the legislature is in our constitution. Our legislature has absolute authority to recall a Circuit Judge or Justice of the Supreme Court at any time without assigning any reason for it. We have got the re-call.

BY THE SECRETARY: In view of the terms of the amendment to the constitution changing it to 25 years, I desire to know what the understanding of the committee is, or of the Association as to the honorary members who have been elected specially in the past? We are going to print a permanent volume this year, and I think that before that is done we should know exactly where we stand on the question of who the honorary members are.

PRESIDENT: We will take that up when we get through with the balance of these reports. This committee had a bunch

of resolutions referred to it. Judge Fairchild was chairman of the committee.

JUDGE FAIRCHILD: Mr. President, the committee recommend one resolution for adoption, which I will read.

*"Resolved, That this Association recommends to the State Board of Bar Examiners, that in determining the question of the admission of applicants to the Bar, in addition to the attention paid to the question of the character of the applicant it make disinterested intelligent investigation as to the disposition to conform to the ethics of the profession as established by the American Bar Association and by this Association, as well as the provisions of the statute relating thereto."*

The committee recommend that for adoption.

As to the resolution in relation to the appointment of administrators of an estate, they recommend that be referred.

PRESIDENT: Hadn't we better take up one at a time. That first resolution is to take into consideration what the fact is, as I understand it, that those qualifications are now under a rule prescribed by the justices of the Supreme Court.

JUDGE WINSLOW: Yes.

PRESIDENT: Of course we would not want to interfere with their jurisdiction on that subject.

JUDGE FAIRCHILD: That is only a recommendation.

PRESIDENT: It would be a recommendation, I suppose, to the justices of the Supreme Court to change their rules as to the entrants' qualifications.

JUDGE FAIRCHILD: I was not present at the meeting of the committee when this was recommended, but it has been entrusted to me to report it. I move its adoption, and the Association can dispose of it.

THE PRESIDENT: There might be some good strong reason perhaps, not to interfere with the justices prescribing those rules.

SECRETARY MORTON: In view of the fact that I presented that resolution I ought to say a word or two why I presented it. We have for several years been endeavoring to have passed in the legislature some laws with respect to the ethics of our profession, in respect especially, to one particular thing, namely, ambulance chasing. It is a well known fact, I think, that in at least one case, or more, in the past few years, applicants have been admitted to the Bar who had

before that openly advertised in contravention of the very thing we are trying to reach by the legislature. It struck me as being a reason why we should recommend to the Bar Examiners some attention to that particular matter.

THE PRESIDENT: I will take the responsibility from my place here, of suggesting that it would be better to leave that subject to the justices of the Supreme Court, as they prescribe the rules, and not interfere with it. You have heard the motion. Is there a second to this motion made by Judge Fairchild?

JUDGE WINSLOW: I second the motion. It seems to me it is proper enough to pass a resolution recommending it.

THE PRESIDENT: I think so. That is unobjectionable, because the justices of the Supreme Court are very likely to adopt any provision recommended by the State Bar Association that is reasonable. Do you so amend it?

JUDGE FAIRCHILD: I have written in those words, Mr. President.

THE PRESIDENT: The motion is made as amended, and seconded as amended.

MR. HARDGROVE: I would like to say just a few words in connection with the recommendations that are involved in this resolution. I want to say those words in the spirit of carrying the recommendation back to the bar. It was my privilege to serve on the Board of Examiners for several years, and I know a little about what the Board of Examiners sometimes get up against. In all my service amounted to practically 4 years. During that time it was my experience that in just one instance did we find a suggestion coming from members of the Bar, pointing out that a particular applicant might not be qualified from the standpoint of ethical conceptions; just in one single instance. Now you must realize another thing: The applications are under consideration by the Board for practically in the neighborhood of 30 days. That is about as long a time as they will be able to have them under consideration at all. In the very nature of things you cannot go out and examine each individual. There is a provision on this subject made under the rules of the Supreme Court, requiring a recommendation from members of the Bar to accompany an application by a candidate asking permission to write an examination. Let me carry this message to the members of the Bar: that before you sign that it is your

duty to know whether or not the man is a man of such character as ought to be permitted to enter the profession. The responsibility as a rule, as now framed, rests first with the members of the Bar themselves.

THE PRESIDENT: Aren't you getting outside of this resolution? You are getting into an independent field. I guess the Bar has got that pretty well in mind now. Those in favor of the motion will manifest it by saying "aye".

Motion adopted.

JUDGE FAIRCHILD: The next resolution with reference to appointment of administrators of estates exceeding \$1,000 in value, the committee recommend that it be referred to the committee on amendment of laws, and I move that that be done.

Motion seconded and adopted.

JUDGE FAIRCHILD: "*Resolved*, That it is the sense of the Wisconsin State Bar Association that the constitution of the American Bar Association should be so amended as to make eligibility to membership therein dependent upon membership in the local State Bar Association in the state in which the applicant resides, and upon maintaining such membership," we recommend that be tabled, in view of the action taken by the Association this morning. I move that be tabled.

Motion seconded and adopted.

JUDGE FAIRCHILD: Here is a long resolution relating to alleged practices existing on the part of district attorneys. There is no evidence to sustain the resolution, and we recommend that it be tabled. I won't take the time to read it unless somebody insists upon it.

Motion seconded by Judge Winslow, and adopted.

THE PRESIDENT: What has become of the resolution that was proposed by Gen. Estabrook?

JUDGE FAIRCHILD: It was withdrawn.

MR. GOGGINS: Mr. President, if it is in order, I move that the Secretary of the Association forward to the Secretary of the American Bar Association a copy of the address of Mr. W. A. Hayes, with request that it have early publication in the journal of the American Bar Association if the rules and practice of that Association permit.

Motion seconded and adopted.

PRESIDENT: I think that includes everything that there is on my table except the report of the Financial Committee.

MR. MORTON: Mr. President, a year ago the Association authorized a copy of the report to be sent to Mr. Merritt and Judge Olson, of their addresses, when printed. They requested also that a hundred copies of each be sent to them, and that was done. A bill of \$6 for each hundred was presented. I don't think I would like to have those bills forwarded to these gentlemen, and I would move the Association that they be paid by the Association.

Motion seconded and adopted.

JUDGE FOWLER: I move that we extend a vote of thanks to the Racine Lodge of Elks for their kind hospitality during our convention.

THE PRESIDENT: That, I assume, is seconded and we will vote on that by a rising vote.

Motion adopted unanimously.

MR. PARKER: Mr. President, I move that this Association elect to honorary membership Hon. Moorfield Storey, Prof. Wm. R. Vance, of Minneapolis, and Mr. Albert M. Kales, of Chicago, all of whom have addressed us and favored us with their presence at this meeting.

Motion seconded and unanimously adopted.

MR. W. A. HAYES: Is miscellaneous business in order?

PRESIDENT: We have gotten pretty nearly down to that, yes, sir. There isn't anything left, Mr. Hayes, except a suggestion or two. Perhaps I had better make them at this time. There are two members of each one of these regular committees to be appointed, and I shall leave them to be appointed by my successor, as was done last year. There is a request by the American Bar Association to appoint three delegates to attend a meeting that is to be held on the day before, I think, the next meeting of the Bar Association. We had a similar request last year, and the appointment was left to be made by the successor, and President Goggins did not make those appointments. I think it was understood they should be made by his successor, and I made them, and they will be left in the same way at this time. Then my successor can make the appointments. There was a different subject up this year; organization of the Bar for public service, for eradication of unnecessary and harmful legal technicality, for prevention of unnecessary litigation, for elimination of the evils of the contingent fee, and thus to increase popular respect for law and public confidence in the legal profession. That is the



general subject to come up this time, and my successor will appoint the delegates to attend.

MR. HAYES: Mr. President, there is pending in Congress a bill to withdraw from federal judges the authority to comment on the evidence in their instructions to the jury. This bill has been considered by the committee to suggest remedies and procedure of the American Bar Association, and the chairman of the committee, Mr. Wheeler, of New York, has requested members in the state to write to the members of Congress. It seemed wise to bring the matter before this Association by resolution, and therefore I move that it be the sense of this Association that the bill now pending, having for its purpose depriving Federal Judges of authority to comment upon the evidence in their instructions to juries, be defeated. It should be defeated. The committee has reached the conclusion that it is a step in the wrong direction. I move the adoption.

MR. GOGGIN: I desire to second that motion.

Motion adopted.

MR. HAYES: I now move that the Executive Committee of the Association be constituted a special War Committee for the purpose of taking whatever steps may be deemed advisable to organize the members of the Bar of the State for war purposes, and that it be authorized to incur such expenditures as the solvency of the treasury of the Association may permit.

JUDGE FOWLER: I second the motion.

PRESIDENT: From what I know about the financial condition of the treasury, it won't permit of anything outside of the ordinary expenses of the Association. We are pretty well loaded up now. You have heard the motion now, Gentlemen. The Executive Committee will be pretty well burdened to add that to them, but if it is the sense of the Association, no objection will come from this quarter.

Motion seconded and adopted.

THE PRESIDENT: I think the only thing left is the report of the Committee on the Nomination of Officers, Mr. Sanborn.

MR. SANBORN: Just prior to the afternoon meeting we had a meeting of members of the Legal Advisory Boards, and at that time we adopted a resolution as to the duty of the Legal Advisory Boards, and members of the Legal profession, in regard to the services which might be performed, or required

to be performed growing out of the selective service law, and the calling of registrants to military service. That was submitted by Mr. Kaumheimer, and he has been endeavoring to put it into shape, and I believe has done it, and is having it typewritten.

**THE PRESIDENT:** I presume, Mr. Sanborn, from what I heard just before you suspended, that that may lead to some discussion. I would like to dispose of the balance of this order of business. Mr. Killillea, will your committee be ready to report on the nomination of officers?

**MR. KILLILEA:** Mr. President, your committee appointed by the Chair to suggest nominations for the ensuing year beg to report as follows: For Secretary and Treasurer the present incumbent George E. Morton, of Milwaukee, Wis.; as Vice-President of the 1st Judicial Circuit, Thomas M. Kearney, Racine; Vice-President of the 2nd Judicial Circuit, C. A. Van Alstine, Milwaukee; 3rd Judicial Circuit, F. C. Beglinger, of Oshkosh; 4th Judicial Circuit, T. M. Bowler, of Sheboygan; 5th Judicial Circuit, W. R. Graves, Prairie du Chien; 6th Judicial Circuit, Andrew Lees, La Crosse; 7th Judicial Circuit, Edward Kileen, Wautoma; 8th Judicial Circuit, O. W. Arnquist; 9th Judicial Circuit, James Clancy, Stoughton; 10th Judicial Circuit, E. J. Goodrick, Antigo; 11th, John J. Fisher, Bayfield; 12th, J. D. Dunwiddie, Monroe; 13th, C. A. Christiansen, Juneau; 14th, W. L. Evans, Green Bay; 15th, H. R. Reeves, Rhinelander; 16th, F. W. Gennrich, Wausau; 17th, Frank H. Hanson, Mauston; 18th, H. B. Rogers, Portage; 19th, Alexander Wiley, Chippewa Falls; 20th, A. B. Classon, Oconto.

In making the recommendation for the office of president for the ensuing year, the committee has taken a rather bold step under the circumstances, but realizing the position which the State Bar Association occupies before the people of the state at the present time, the duties devolving upon it, the importance it is to the community, we have seen fit to call upon a man to sacrifice his personal inclination in this matter, as he has for the last 30 years in Wisconsin, when he has devoted his life to the jurisprudence of the state, and we have unanimously suggested for the position for the ensuing year our Chief Justice, John B. Winslow. (Applause).

Now, Mr. Chairman, for the purpose of bringing it before the meeting I move the adoption of the report, and that the

secretary be instructed to cast the ballot for the election of the officers named. I might add that, in naming the Vice Presidents we named none of the present incumbents, not because of their unfitness. We had that in mind, fully, but deem it for the benefit of the Association to select other members, hoping they would do equally as good work as the present incumbents.

MR. EASTMAN: I second the motion.

Motion adopted.

SECRETARY: The Secretary has the ballot prepared, and also cast.

MR. PRESIDENT, may I be permitted to call the attention of the Association to the fact that the term of office of the chairman of the Legal Education Committee expires this year.

THE PRESIDENT: It is marked in the report Dean S. Richards, Madison, 1918, Chairman. So there will be an appointment made in his place, I suppose.

MR. KILLILEA: I think the committee did not understand; thought that that office was filled by the Chair.

THE PRESIDENT: I understand that is right. That will still be by appointment.

MR. SMITH: I move that the matter of filling vacancies as not covered by the report of the Committee on Nominations, be conferred upon the Executive Committee, with power to act.

PRESIDENT: If the by-laws cover that I do not suppose we can dispose of it in that way.

MR. KILLILEA: With the consent of the committee I suggest they retain the present incumbent, Dean Richards.

Motion seconded and adopted.

PRESIDENT: Now there isn't anything excepting this matter that Mr. Sanborn wishes to present, and perhaps there isn't any other matter. I will not formally call the Chief Justice to the chair till that is disposed of.

THE SECRETARY: There is one other matter, that is the matter of selecting a place of meeting for next year.

PRESIDENT: It has been customary for the last 3 or 4 years to leave that to the Executive Committee. Will someone make a motion on the subject?

JUDGE FOWLER: I move it be left to the Executive Committee, to select the place and time for the next meeting.

Motion seconded and adopted.

MR. SANBORN: Mr. Kaumheimer and I were trying to put in formal shape the sentiments expressed by this meeting of legal advisory boards, and a short time ago they were in typewriting and he has not got them over yet. Very briefly the sentiment of that meeting as expressed was that the relation of attorney and client ought not to exist, cannot properly exist, between the lawyer and the registrant in matters growing out of the selective service law; that is, that the work performed in assisting in filling out the questionnaires, in making additional affidavits, and in furnishing proof which may be needed to enable the board to determine the proper qualification of the registrant, is a service rendered to the public and not to the individual; whether that individual be the registrant himself or some person or corporation for whom the service is required to be performed. Not only because the lawyer is serving the public, but because he should be rendering impartial service, and not that of an advocate, as he would be if he was accepting a retainer, and acting as the paid employee. Further, some principle ought to be applied, that is the principle of gratuitous service perhaps I can put it, rather than the relationship of attorney and client, ought to be applied to the services which are rendered necessary by the calling of a registrant into military service, and that ought not to be presented, or the work ought not to be done gratuitously simply as a matter of charge to the registrant, but as a matter of public service; and therefore, that the question of whether the registrant was individually in financial condition to assume the burden, would not be material. I was instructed to present these to the Association, and ask its approval.

MR. KAUMHEIMER: They are on the way over here.

PRESIDENT: We have gone along so rapidly this afternoon that we have plenty of time to finish. I hope that all the members of the Bar present will make it convenient to remain over till to-morrow, and partake of the splendid entertainment that our friends in Racine here have laid out for us.

SECRETARY: Mr. President, if there is nothing further now before the Convention, I want to suggest one or two matters. In my report I referred to the matter of a system of land titles which has been investigated by the Milwaukee Bar Association, and has been referred to the committee of that Association, who have been working upon it. It seemed to me

that there is enough of importance in that to warrant its reference to some committee of this Association. Someone, I think Mr. Eastman, yesterday or this morning, suggested that be done, but nothing further was done.

PRESIDENT: What has become of Judge Werner's system of that sort that he got out and had copyrighted?

SECRETARY: I have no knowledge of that.

PRESIDENT: Judge Werner had invented a system of that kind that he thinks is superior to any other system of the sort, and he has had it copyrighted.

MR. MORTON: I move you, Mr. President, that both this system that was suggested, and also the one of Judge Werner's be referred to a committee to be appointed by the President, and to report upon it at the next meeting.

Motion seconded.

MR. MORTON: Mr. President, it seems to me in view of the fact that the legislature meets in January next, that the Committee on the Amendment of Laws, or the Executive Committee ought to have power to take some action on it.

PRESIDENT: Wouldn't it be better to have that whole subject referred to the Committee on Amendment of Laws?

MR. MORTON: I am perfectly willing to have that done.

PRESIDENT: Let them take such action on it as to them seems advisable.

MR. MORTON: Then I will consider my motion amended according to the suggestion.

Motion seconded as amended, and thereupon adopted.

PRESIDENT: Listen to the report Mr. Sanborn has to present.

MR. SANBORN: As I stated, Mr. Kaumheimer and myself have tried to put in the form of a resolution what was presented there at this conference of members of the legal advisory boards. I will read it.

WHEREAS, The purpose of the Selective Service System is to furnish men for the paramount military needs of the Nation in the order that their removal will interfere least with the civic, family, industrial and agricultural institutions of the Nation; and,

WHEREAS, The President of the United States has called upon the Bar of the Nation to assist the Nation in this great enterprise; and,

WHEREAS, The lawyers of this State as individuals have responded to the call of the President, and this Association wishes to place itself on record wholeheartedly in response to that call,

Therefore, be it

*Resolved*, That it is the sense of the Wisconsin State Bar Association that there cannot properly exist between a lawyer and a registrant as such, the relationship of attorney and client; and be it further

*Resolved*, That it is improper and contrary to the spirit of the call of the President for a lawyer to accept any compensation whatever for any service required by the Selective Service Regulations; and, be it further

*Resolved*, That whenever by reason of being called into service a select man requires legal services that such services be rendered wholeheartedly and gratuitously regardless of the financial ability to pay for such services—the sole test being that such services is rendered necessary or desirable by reason of the call into military service.

MR. SANBORN: I move the adoption of the resolution.

PRESIDENT: Is that all in one resolution, or are there several?

MR. SANBORN: One. There are three divisions of it.

MR. MYERS: I second the motion.

PRESIDENT: I heard some discussion of this among the gentlemen that had specially to do with this work, and I thought there was some opposition among the gentlemen to one of these methods, and I didn't know but it could better be divided so that he could be heard if he wanted to. I suggest you have these taken up one by one.

MR. SANBORN: "*Resolved*, That it is the sense of the Wisconsin State Bar Association that there cannot properly exist between the lawyers and registrants as such the relation of attorney and client."

I move the adoption of that portion of the resolution.

Motion seconded and adopted.

MR. SANBORN: This is the one on which there was discussion, and possibly the other one too:

"*Resolved*, That it is improper and contrary to the spirit and call of the president for a lawyer to accept any compensa-

tion whatever for any service required by the selective service regulations."

I move the adoption of that portion.

Motion seconded. (For vote see page 427.)

MR. EASTMAN: Mr. President, I realize that mine was the only voice raised against that proposition, and then it was voted upon. That resolution as it appears there is misleading. "Any service that may be required." May I just take the resolution:

*"Resolved, That it is improper and contrary to the spirit and call of the President for a lawyer to accept any compensation whatever for any service required by the selective service regulations."*

Now just to illustrate how that might be misconstrued or evaded either way. A circumstance occurred in my territory, where a man was in the selective service. He was a registrant, was very wealthy, thought it best to organize a corporation to take care of his business while he went into the service, and called in some relatives, who put in more money, organized a \$300,000 corporation, and took over the entire business. Would you say that that was within the spirit of that resolution?

A number of voices: No.

MR. EASTMAN: They thought it was because the thing had been mooted. I said no, I shall charge you a fee for that service, and I did, and then I paid it over to the Red Cross, the entire fee. Now that may be and will be misunderstood. Because a man enlists in the service we take off our hats. No one does so more quickly than myself, but there are men who will take advantage of that thing and insist that the lawyer put himself to the expense of time and perhaps of money by reason of just such a resolution as that. I have in mind another concern worth a quarter of a million dollars, where one of the managers was called into the service, and they are making vigorous protest against the payment of the services of an attorney going to New York City to represent his interests, when the attorney is not worth anything practically, except that he is a good lawyer. I say that, because it is not myself. Those things will be abused, men, I am heartily in favor of the spirit of that resolution, but I am not in favor of the resolution as it stands, because it is so broad that it is subject to abuse, and the lawyers of Wisconsin have and will

respond loyally to every demand made upon their time and capability. We must give, we want to give. We want to contribute to the Y. M. C. A. and the Red Cross and the K. C. In order to do that we must have the wherewithal. It is just as loyal, it is as patriotic for us to insist upon being paid for services rendered to those, or the families of those who are much more abundantly able to pay than we will be to contribute, that we may do our paying, and I submit that that resolution as it stands ought not to pass even if my voice is the only voice on that subject.

MR. HAYES: Mr. Eastman, can you not recast that particular resolution so as to more clearly define the duty as you have it in mind.

MR. EASTMAN: I would say this. Our own Bar Association passed upon this subject, and defined that with me. It reads about like this: That the lawyers contribute their services gratis in cases where the exigency or the necessities of the case appear to require such service to be gratis. That was about the language.

MR. HAYES: That is pretty loose also.

MR. EASTMAN: I think we also had in the question of the ability to pay. We will have to have a pretty broad construction of this language to get any such service as you speak of into that resolution? Any service required by the selective service regulations? How do you bring the service you speak of as a service required by the selective service regulations?

PRESIDENT: There won't be any straining to give a particular construction to this probably, to bring everything into it that can be brought into it. It will be rather an exclusive perhaps, than an inclusion.

MR. EASTMAN: I appreciate that, Mr. President, but the question arose in my mind because of the difference between the resolution as it now reads, and the suggested form which says: "*to the registrants or their dependents or families.*" If they had left out that part of it I would admit this resolution covers the ground. As it reads there, I may be the one to pass upon whether the service is required, or the registrant may claim the right to pass upon the question, as to whether the selective service regulation requires the legal services to dependents or families to be rendered gratis regardless of the financial condition of such dependents or families."



MR. HAYES: I suggest that Mr. Sanborn add perhaps to the particular resolution a clause providing that in the event of a difference of opinion as to whether the service in question is or is not required by the selective service law, that the question be referred to the Central Legal Advisory Board. I do not say that because I happen to be a member, but perhaps some provision may be added by which that body or some other body can determine the difficulty, where a difficulty does happen to arise.

PRESIDENT: It seems as if that resolution might and ought to be drawn so that a construction would not have to be applied to it to see what it means.

MR. GOGGINS: Mr. President, I would like to ask Mr. Sanborn if he has got a copy of the rules and regulations that were promulgated under date of Nov. 8th, 1917. There is a clause in that bearing upon this very subject, that if it was before this body for consideration might help this matter out a great deal.

MR. SANBORN: Promulgated by whom?

MR. GOGGINS: By the President. It relates to the questionnaire.

MR. SANBORN: Those are the regulations referred to by the resolution.

MR. CAVANAGH: I apprehend, Mr. President, that really the only question of any importance in this matter is a question as to clients that come to the office of an attorney, principally corporations who have Government work, and ask them to do work, to get men into a deferred classification on account of the work. That is about the only question that is involved here. I don't believe there is an attorney in the State of Wisconsin that wants a registrant to pay him anything to help him fill out his questionnaire, or for doing anything else that may be required so far as the registrant is concerned.

THE PRESIDENT: Please do not depart from the strict scope of this resolution.

MR. CAVANAGH: I am not trying to, but the resolution as I understand it, covers just exactly the point I make. I have a client who is a corporation. That client comes to me and says I want 20 men, I want you to recommend 20 men for deferred classification, and make the necessary papers and affidavits to back up that deferred classification. The question then arises whether that is to be done by the attorney, the cor-

poration being his client, without any charge. Of course it comes up first before the Legal Board for recommendation only. Then it is necessary to go before the District Board and present that matter. Now the question, and the only question that I see that arises under this resolution is whether the attorney is expected to give that service to his client, or whether the client is expected to pay a reasonable compensation for that service.

**PRESIDENT:** That will be determined by whether that particular service is required by the selective service regulations.

**MR. CAVANAGH:** Yes, under the terms of the resolution.

**MR. SANBORN:** I will simply say that I think there is no doubt that it is required.

**MR. KAUMHEIMER:** That is just where I don't agree.

**MR. HICKOX:** It seems to me that the question that has just been suggested is the very one that it is the purpose of this Association to clear up; namely this, that it does not make any difference whether the affidavits are required by the registrant to establish his own rights, or whether the industry in which he is engaged is so necessary in the present emergency that the board should be acquainted with the facts so as to keep those men out of the army and leave that industry undisturbed, and whether or not, when those facts are sought to be established by the people charged with the necessity of furnishing the material necessary to carry on this war we should charge them for presenting in proper form for the consideration of the District Board the facts which the selective service law requires should be presented. That is exactly what we want to get at. To me it seems just as important, in view of the regulations which have been promulgated, that there be the least disturbance of industrial or agricultural conditions consistent with the proper prosecution of the war, that those cases coming within that should be properly presented to the District Board to carry out the spirit of this law, namely, to the end that those who are in less necessary industries, be called. So far as the administration of the law in Milwaukee County is concerned, it has been the policy to make those affidavits, present those facts, without charge, regardless of whether they were called upon by the corporation in the first place, or by the registrant attempting to set up his rights. Many regulations formed by the District Board which are utterly impossible for the ordinary work-

man, necessary though he may be in the industry, to supply. They ask numbers of contracts, and all those things, and it is necessary to go to the corporation to get them. I don't care whether the corporation is a client of mine or a client of some one else's. If in order to keep their industry necessary to the conduct of this war in proper shape to ask for deferred classification for a number of men, I think they are entitled to have that presented without being put to the expense of doing so, and I think it is but doing a patriotic duty and perfectly in the spirit of the call of the President that we go ahead and do that work, and this resolution was framed exactly to meet that situation, namely, that regardless of whether it be employer or employee, to present the facts to the District Board, that the work be done by the lawyer in the spirit of that law, and gratuitously.

THE PRESIDENT: Will it be understood then that this resolution was intended by the committee and should have the broad construction suggested?

MR. KAUMHEIMER: That is the intention.

PRESIDENT: So they will vote on it intelligently.

MR. PARKER: I want to say just a word to the effect largely that I agree entirely with the gentleman from Milwaukee who has just explained the situation as I deem it is to be presented to the lawyers of the state.

PRESIDENT: Well, it will be taken as the sense of the whole committee, as suggested, that this resolution means just what it says, and that it should have a very broad signification.

MR. PARKER: In our Bar at Green Bay I want to say that so far as I know or have been able to ascertain, and I have made an effort to ascertain the fact, no lawyer in Brown County has charged a registrant or an employer anything for the service performed in connection with this work. The history of England, as we are advised, shows the importance of properly classifying these men, and retaining the necessary men at home to conduct the industries of the government. I deem it just as important as it is to classify a man and put him in class 1 and send him into the army, and I think that is the spirit in which that questionnaire work is undertaken and is enforced under government regulation.

PRESIDENT: The question of course, is now on this resolution, what it means. The committee I suppose is all agreed that this resolution means what it says and should be con-

strued broadly to cover all the services which are directly or indirectly required under the selective service regulations.

MR. PARKER: That is just my understanding, and that is the position that I take. There is one other point I think, why that resolution should be passed in that way, and that is: if you permit a charge to be made anywhere along the line, you are going to have an indefinite dividing line that never will be construed the same by any two lawyers, or by the lawyers of any two sections, and you are going to lead into trouble, and it seems to me that the only way you can ever handle the situation is to say that you shall not charge at all for work done under that law. I favor the resolution and hope it will pass.

PRESIDENT: If some record could be kept perhaps it might be considered that this resolution is adapted in the light of the construction which the Chair has attempted to give to it, if the committee will agree to it; that this covers every service which is required, directly or indirectly, under the selective service regulations; and I think that with the broad construction of it I don't see as you can add anything to it unless you want to simply say a word in favor of the motion. That is all understood now, unless somebody wants to talk against it. Are you ready for the question? As many of you as are in favor of the motion so construed, will manifest it by saying "aye". The motion is carried.

MR. SANBORN: "*Further resolved*, that whenever by reason of being called into service selected men require legal services, that such services be rendered whole-heartedly and gratuitously, regardless of the financial ability to pay for such services, the sole test being that such service if required is rendered necessary or desirable by reason of the call into military service."

I move the adoption of it. The reason we wanted it that way was that there are those who are not able to pay but do not want to be put in the position of getting something for charity, but we do not want them put in the position of getting something for charity, they are given what is their legal or moral right without any reference to any charitable relation at all.

Motion seconded that the resolution be adopted,

Resolution adopted,

MR. SANBORN: That includes the preamble, I suppose?

PRESIDENT: I suppose so.

MR. KAUMHEIMER: I move the adoption of the resolution as a whole.

Motion adopted.

MR. KAUMHEIMER: I move that the Secretary of this Association be instructed to send copies of it to the secretary of each County Bar Association in this state.

Motion seconded.

MR. KILLILEA: Before the meeting adjourns I think it would be well that the Chief Justice be notified of the action of the committee, that he may appear before the close of the meeting.

SECRETARY: We have not done anything with Mr. Doerfler's paper as yet.

MR. DOERFLER: The point Mr. Morton makes is this: that there are in existence now a list of honorary members. This new provision provides that an honorary member shall be recommended by the executive committee, and elected, or the recommendation approved by the Association, and I suppose the question that he raises is directed to what shall be done with those who have heretofore been elected as honorary members.

MR. MORTON: That is one question I had in mind, but only one.

MR. DOERFLER: I assume that the Executive Committee can take up a list of those who are now honorary members, and recommend to the Association at the next meeting that their honorary membership be continued and that they may then thereafter recommend such other members for honorary membership as they may deem fit.

THE PRESIDENT: Isn't that going unnecessarily far? Could there possibly be anything under that resolution which would remove an honorary member from the list? I don't see anything in it. Is it possible that the effect of that resolution would be to remove an honorary member from his status as such?

THE SECRETARY: If I remember the discussion, the idea was that there should be an absolute overturning of the proposition of honorary membership in our Association, for the purpose of building anew on a proper basis, as they thought it had not been done before; and I think the idea was to wipe out

entirely the honorary membership list. I think that was the idea of that resolution. That is the reason why, in order to clear that matter up, I wish to move that all those who have been specially elected as honorary members of this Association before this—I mean individually elected—shall be considered as honorary members of this Association, so that their names may be published in the forthcoming volume as such.

Motion duly seconded and unanimously adopted.

THE SECRETARY: The other matter was this paper on the trust companies. I want to ask that that paper be also referred to the Committee on amendment of laws, with power to act as they see fit, at the coming session of the legislature.

THE PRESIDENT: I suppose you intend to include, with reference to Mr. Doerfler's paper, a reference of the reply which was made by Mr. Jones; the whole subject.

THE SECRETARY: Certainly.

THE PRESIDENT: That would be very proper.

MR. KILLILEA: I second the motion.

MR. CAVANAGH: I would like to move an amendment to that motion, that it be referred to a committee to report at the next meeting of the Association. Mr. Doerfler made a rather drastic attack upon the trust companies of this state in his paper yesterday, and I feel that it should have fair consideration. I feel that one year's consideration until the next meeting of this Association is not too much to ask, in justice to the people of this state who are engaged in that line of business. Mr. Jones was at a great disadvantage. He had to wait until he heard Mr. Doerfler's paper that was evidently prepared at great expense of time to meet the arguments here on the floor. I hardly feel that it would be proper to submit that except to the next meeting of this Association, when the matter can be properly presented.

MR. EASTMAN: I second the amendment.

THE PRESIDENT: You have heard the motion and second to the amendment. As many of you as are in favor of the amendment, say "aye". Contrary "no". The Chair is unable to decide. Those in favor of the amendment will manifest it by rising. The secretary will count.

SECRETARY: There are 27.

PRESIDENT: Those opposed, will rise. The amendment is adopted. Now those in favor of the motion as amended will say "aye"; contrary "no."

Motion adopted as amended.

PRESIDENT: It was a very interesting discussion. I suppose even if it is referred the material can be used in the preparation of some bill to report to the legislature, if desired. It is a subject that will undoubtedly be presented to the legislature at some time, and perhaps very properly so.

MR. MORTON: I waited for someone else to speak of this matter that I wish to present now, and no one seems disposed to do it. I think we are entirely overlooking perhaps the most important matter that has been presented to this Association, and that is the paper of Mr. Vance, from Minnesota. No resolution has been offered upon the question involved in his paper, and it seems to me that a lawyers' convention, to whom such an address has been made, can hardly afford to adjourn and take no action upon it, when we have taken action on nearly every other question that has been discussed before us. It seems to me that if we believe anything like as Mr. Vance does, and as he stated in his paper, that we should take some action. After coming here I attempted in the few minutes I had, to draw a resolution upon the question, but I was unable to draw it to really suit myself, and I do not care to present it to the committee for formal action. I did and I do want to present to the Association the subject matter, and I will present it in the form of a resolution I have, with the idea that it may be referred to the Executive Committee or such other committee as the Association desires, for proper action, and such action as may be desired; but I do think that this question ought to be considered, and if you permit it I will read the resolution upon the question.

*Resolved*, That it is the sense of the Wisconsin State Bar Association in convention assembled that the Great War in which we are engaged be unflinchingly and unswervingly prosecuted to complete victory over the Central Powers,

*Be It Further Resolved*, That to maintain the peace of the world at the end of this war there must be established and should if possible then be in existence a world organization with as great powers as is necessary and with authority to employ the power of the nations of that organization against any nation of the world which defies its judgments or decrees made according to the laws or rules of international conduct and relations duly established; and

*Be It Further Resolved*, That the President of the United States be urged to call upon the nations fighting with the United States and upon all other nations which are in sympathy with these aims and are willing to do so, to send representatives to a conference to be at once held to consider a more effective union of allied nations for war and consider the kind of an organization which is most desirable to maintain peace, such organization to be put into effect as soon as possible as to the nations willing to thus co-operate, with a view of pointing the people of America and the world to an exact object to be attained by military victory, and to help create a universal purpose to fight until that end is obtained.

MR. SANBORN: Mr. President, I am sorry Senator Whitehead had to leave. It happens that the statement in the resolution as read by Mr. Morton is the program of the League to Enforce Peace, of which Senator Whitehead is the chairman for Wisconsin, and of which I happen to be one of the members. That was organized before the outbreak of the war, and I think in some ways it goes further, as the program announced by the League to Enforce Peace, so far merely contemplated the use of the course promulgated against a nation which would not wait for a specified period, in case of dispute, before declaring war. But I think or suggest as an amendment to consider that we ought to endorse the program of that organization, and that that be included in this resolution.

THE PRESIDENT: I suggest for a moment a thought. I understand that that subject was brought up at the Philadelphia meeting. The suggestion was there made that there should be a movement to organize this world court immediately; that they should not wait for peace, and that it was very strongly opposed by President Taft, one of the chief figures there, and it was dropped out. So I was told by Prof. Vance last night; and that they were very much opposed to it. I wanted to speak about it now so you could vote understandingly on that.

MR. CAVANAGH: Mr. Chairman, the object and purpose of that objection is that all these camouflage peace things that are flying around in the air may be buried for the time being. There are so many of them that people cannot keep track of them. Mr. Taft, in absolute communion with the President and others, have concluded that the time to talk peace is



when we win this war, and that then we can make our terms and make them definite, and so that everybody can understand them, and make them for all time. These little things that are floating around in the air become in a way troublesome; grasping at something; why don't we do this, and why don't we do that? Why don't we make peace here, and why don't we do this and that, all weakening the great effort we are making to win this war.

THE PRESIDENT: I am quite favorable to that resolution—permit me to say that from the chair—but I thought before voting on that the members ought to understand that that subject was brought up at Philadelphia, and it did not receive any approval at all. In fact it was the general understanding that the formation of a court should be left entirely for consideration after the war was won.

MR. CAVANAGH: That is right.

MR. BENTLEY: I was present there at Philadelphia, and a member of that League I attended all its sessions. That was talked about, but I did not get the impression there that the Chair announces. I can see no objection at all to the resolution offered by Mr. Morton. I don't think it hurts us any. I think it simply puts us in line with the general purposes of the League.

MR. HAYES: Mr. President, we are fighting now, and I move that until the war is over we defer action upon peace resolutions.

MR. CAVANAGH: I second the motion.

THE SECRETARY: Mr. President, I simply have one word to say on that motion, and that is that this is not a peace resolution. If there is anyone who is not a Pacifist at this time, I am that person. I am simply doing what Henry Ford says is necessary to be done, and that is, fighting for peace; but I want to see the people of the State of Wisconsin and the world pointing to some definite object to fight for. It seems to me that if there is any one definite object that we are fighting for it is that object of world organization. The only point where we can possibly differ it seems to me is on the point as to whether or not we shall wait until after the war, instead of going ahead now, trying to think at least, how we should organize. It seems to me that we can well take some counsel of what we did in our early days, and that is, to begin to think about an organization that was going to

live after the war even though the war was not then won. We did not wait until after we had won the war of the Revolution against England in order to find out what we wanted for the government in this country after the war was over, and I think that is a sufficient example at least for me to point to at this time to clear me from any idea that this is a Pacifist resolution.

MR. HAYES: Mr. President, I did not want to be taken down on that. I am guilty of stirring up quite a discussion, but there will be abundant time for this organization to take action after the armies quit fighting. There are very much greater questions to arise when the fighting is over. There are some great nations concerned, nearly all, and I suspect that the Peace Congress will convene when the fighting ceases. They will have a job for a year or more. We shall have time, and I think that we ought to then act, and not tie our hands at this time by any ill-advised move. We know where we are going. We are on the path of war. We are in the field of fight, and when we have knocked our enemy down and have our heel on his neck we will talk peace. That is the kind of peace we intend to have and have for others.

THE PRESIDENT: The motion is that this matter be laid over for the present, is that it?

MR. BENTLEY: Mr. President, I do not take any second place on the question of war with anyone. That was not a Peace convention. It was a War convention if there ever was a war convention held in this country. There was not an element of peace in it except the fact that when peace comes, that peace will be permanent, so as to make future wars of this kind impossible. There was no element of anything like peace in it, and until we did win this war there was not a declaration there from one of the 5,000 delegates that was not thoroughly imbued with the thought that we were going to win this war, and win it first. I cannot see why there should be any objection to a stand to be taken by this Bar Association at this time, along the lines suggested by this resolution. I think it is in entire harmony that was taken at the League. I happened to be on one of the committees there myself, and I know something about it.

THE PRESIDENT: The motion is, I suppose, to refer this subject to some special committee. Is that the motion?

MR. HAYES: I will make it more definite. I move it be laid upon the table.

MR. DOYLE: I ask that the resolution be read again.

THE PRESIDENT: It is a pretty long resolution. I understand the subject of the resolution is that the Bar take action with reference to the subject of the formation of a court to enforce peace presently. That is, not wait until peace is won by war. The general scheme of the Philadelphia convention was to win the war first and then proceed to form this international court that would hear all controversies in the future, instead of having them settled by wager or battle. The purport of this resolution is that we do the same thing, but not wait till peace is won by war; do it now. Let all the neutral nations come in, and all of the warring nations except the central nations. We do not want to recognize them at all, I suppose. Is that right, Mr. Morton?

JUDGE FOWLER: Mr. Chairman, I would like to have that resolution read. I do not think we want to go on record as voting down that resolution.

MR. EASTMAN: I ask this, Mr. President: I do not think we can pass those resolutions as they were read, but I move a substitute to those resolutions that will in my judgment cover the situation without, as Judge Fowler says, stultifying ourselves by voting it down or laying it on the table. I move you, as a substitute to the resolution proposed, that

WHEREAS Prof. William Reynolds Vance, Dean of the Law School of the University of Minnesota, has read to the State Bar Association in convention assembled, an interesting and instructive paper on the subject of the establishment of a permanent Peace Court, *resolved*, that the State Bar of Wisconsin is in favor of the establishment at the proper time, of a court or tribunal with sufficient power and authority, through the consent of the nations involved, for the establishment of a court of permanent peace and the enforcement of the decrees thereof.

Motion seconded.

PRESIDENT: Gentlemen, you have heard the motion. The motion is that the resolution as suggested by Mr. Eastman be adopted as a substitute for the one presented by Mr. Morton. Are you ready for the question?

The substitute is adopted. I have been reflecting a little over this subject of Mr. Doerfler's paper. A great deal of

work was put upon that paper. It was very valuable work, and I am inclined to think myself that if any member of the Bar sees fit to adopt it, and will make a motion to that effect, of course the way is open to do it. It would be correct to have Mr. Doerfler's paper and the reply to it written out, and have it referred to the proper committee of the legislature. Just refer the paper. If they see fit to do anything, they can do it. We have a Committee on Banks and Banking. Isn't there a committee that has special charge of the subject of trusts and trust companies, Mr. Jones?

MR. JONES: Not that I am aware of.

THE PRESIDENT: In your absence there was a motion made that those papers be referred to a committee, to draft a report to present to the next legislature. That was amended by having the matter referred to a committee to report at the next meeting of the Bar Association. The latter was adopted. The question is, whether that whole subject and the work done upon it shall entirely sleep until the next meeting of the Bar Association, and the report of another committee. It probably won't put any more work on it than the gentlemen who have presented it to this Association, and the question is whether it cannot be disposed of by just having those papers themselves, with the presentation of the question, referred to a proper legislative committee for consideration. I make the suggestion, if any person cares to make a motion.

JUDGE FOWLER: Mr. President, I move the papers be printed as soon as may be, and referred to such committee of the legislature as the Executive Committee may select.

THE PRESIDENT: I think that would be a good disposition of them, instead of having another committee and letting it sleep in those records, as a great many matters have. Is there any second to the motion?

MR. THOMPSON: I second the motion.

MR. CAVANAGH: No, I think it is hardly fair. I think Mr. Jones will agree with me that it is not fair. Mr. Doerfler presented a paper that he had spent considerable time in preparing. He presented facts and figures here, and Mr. Jones had to reply to him from notes made at this meeting, and while he was reading the paper, and he was not prepared to meet all of those arguments. I hardly think it fair to send this to a committee and have it go into the next legislature in the shape in which it now is.

**THE PRESIDENT:** I don't think you just understand the exact situation in which that matter was brought up. I don't think that Mr. Jones has anything particular to fear. Mr. Jones was called on months ago to meet that question, and he certainly from the negative standpoint met it fully. It was not a matter where he was called in and did not know anything about it until he heard Mr. Doerfler's paper. Of course as to Mr. Doerfler's treatment of it he did not know until he heard it read. You have heard the motion, Gentlemen.

**MR. C. M. MORRIS:** Mr. President, I agree with the last gentleman who spoke, that it is not fair to do it in just that way. I speak as an employee of a trust company. The trust companies have faithfully and arduously endeavored to serve the Bar, and the banks, and the public. Mr. Jones made a most complete and satisfactory statement, but as has been suggested, it was a statement which he was obliged to make without notice of what was contained in a paper carefully and thoughtfully prepared and in a scholarly way, with abundant time for such preparation. Now I would regard it as fair, and perhaps very helpful if it could be understood that Mr. Jones should be permitted to have the same freedom of examination and consideration of his reply as the paper has had in its preparation. I don't know that he would change what he has said by one word. But for the benefit of the legislature, and for the benefit of the bench and bar and the public, I think he should have that opportunity.

**PRESIDENT:** I think that Mr. Jones' reply word for word has been preserved so that it could go with Mr. Doerfler's paper as perfectly as if it had been written out in advance. I may be wrong about that, but there was a reporter here.

**MR. MORRIS:** Certainly, but Mr. Jones' reply was necessarily gotten up extemporaneously after hearing an address which he had never seen. I say I don't know that Mr. Jones would change one word, or add one word, but if it is acceptable to have Mr. Jones permitted to frame his reply in the form and covering the ground that he chooses to cover, I believe that such a document as is proposed will be helpful to the legislature.

**JUDGE FOWLER:** I understand the committee always refers these papers to the author for correction, and he has the opportunity to make such correction and amendments as he desires before they are permanently printed.

MR. MORRIS: Does correction include amplification? In order to clear up that question I would like it for myself to move that Mr. Jones be given full opportunity to look over this address made in reply, and correct it as he sees fit, or add to it as he may desire to do, and that it be published in the forthcoming report as though made now.

PRESIDENT: It will be referred under the motion made by Judge Fowler. Will you accept that, Judge Fowler?

JUDGE FOWLER: I accept that.

Motion seconded.

MR. CAVANAGH: I suggest the motion is entirely out of order. I raise a point of order.

THE PRESIDENT: I will have to overrule the point of order.

MR. GOGGINS: Mr. President, I am not sure that I understand the force of this motion. Does the motion mean that the Association here leaves to this committee the stand or the determination or the position of this Society upon that question?

JUDGE FOWLER: I understand that that motion merely is that this paper of Mr. Doerfler's, and the reply of Mr. Jones be printed, and the secretary furnish copies of those to the Executive Committee, and the committee send it to the proper committee of the legislature without any action on the part of this Association.

PRESIDENT: That is correct.

MR. GOGGINS: In other words, it is not expected that anyone on behalf of this Association is to prepare and present any bill to the legislature?

PRESIDENT: No. I made the suggestion in justice to the gentlemen who entertained us by their very full discussion of the question. I thought there ought to be a little more free recognition of their work, and a little more speedy disposition of it. Not that it would carry the endorsement of this Association one way or the other.

The motion was thereupon adopted.

PRESIDENT: I still think there may be something forgotten. I will appoint Mr. Hayes and Mr. Jones as a committee of two to notify the Chief Justice of his election as President of this Association for the ensuing year, and I would suggest that somebody make a motion to adjourn until to-morrow morning so that if there is anything forgotten it can be then

brought up. If not, the Justice can then be regularly brought in and installed as President of our Association.

THE SECRETARY: Mr. President, may I make a suggestion here, would it not be well to have that done this evening?

THE PRESIDENT: Very well, it can be done this evening.  
Adjourned until 9:30 A. M. Friday.

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HOTEL RACINE, 6:30 P. M.

TOASTMASTER: JUDGE E. P. BELDEN.

JUDGE BELDEN: Ladies and Gentlemen, may I present the newly elected president of the State Bar Association, Hon. John Bradley Winslow.

JUDGE WINSLOW: Ladies and Gentlemen, you will not expect any speech from me now, I know. Judge Belden has the program, and he has declined to show it to me, but I am reliably informed that my name is upon that program to make a speech later. It would hardly do to inflict two speeches on you this evening. But I wish to say that I thank the Bar for the honor that has been conferred upon me to-day. Those are no mere words of formal thanks. The Bar knows which of its number deserves such an honor. Nobody knows what a lawyer is or a judge is so well as the Bar, and that pleases more than anything else that I can think of now. There is lots of work for lawyers to do. There is lots of work for Bar associations to do in the next few years. When the welter of this war is over, and peace comes, there is going to be plenty of constructive work done, and I promise you, my friends, who have been so far too kind to me in this election, that whatever is possible in my line I shall endeavor to do as president of this Association. I again thank you.

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Friday, June 28, 9:30 A. M.

Adjourned meeting of the Wisconsin State Bar Association held at the Elks Club, Racine, pursuant to adjournment, Hon. J. B. Winslow, President, presiding.

It was moved and seconded and unanimously carried that \$500 of funds of the Association be authorized to be invested in War Savings Stamps of the Government and that the Treasurer be authorized to so invest that amount.

It was also moved and unanimously carried that the thanks of the Association be extended to the J. I. Case Threshing Machine Company and to the Mitchell Motors Company for their courtesy in furnishing automobiles for the use of delegates, and also that the thanks of the Association be extended to the Press, and to the Racine Country Club for their courtesies extended.

It was also moved and unanimously carried that the President be authorized to name delegates to the meeting of the American Bar Association at Cleveland in August.

On motion the meeting adjourned.

G. E. MORTON,  
Secretary.





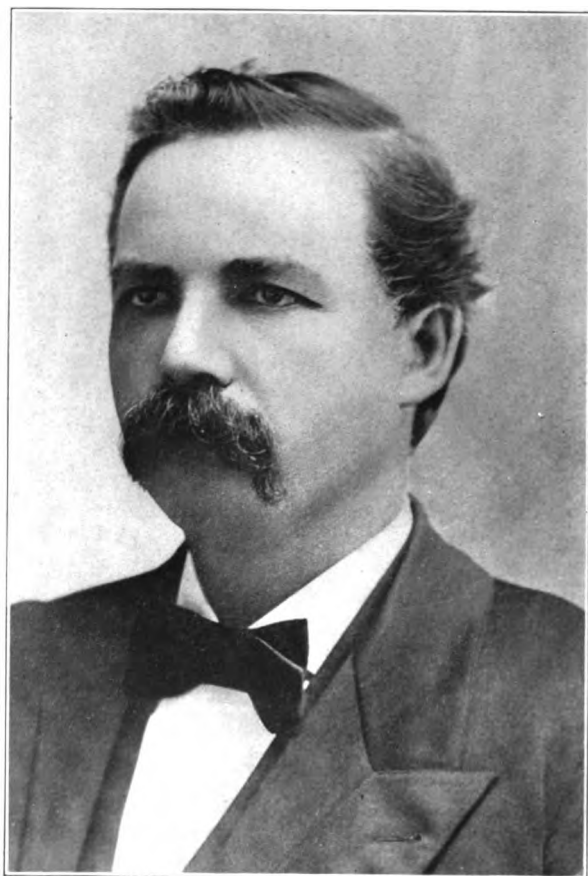
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# APPENDIX

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R. D. MARSHALL.

## IMPORTANCE OF THE CONSTITUTION.

ADDRESS BY R. D. MARSHALL,  
PRESIDENT OF THE STATE BAR ASSOCIATION OF WISCONSIN.  
DELIVERED JUNE 26, 1918.

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### Members of the Bar Association of Wisconsin:

It gives me much pleasure to be with you at this annual meeting. It has always been a pleasure to attend such gatherings, but circumstances give to this occasion peculiar significance in my life. I have been a member of the society for nearly forty years and, with a few exceptions, I have attended its annual gatherings. I see but very few faces before me of those whom I early met on such occasions. By far the greater part have departed to that country from whence no traveler returns; most of the remaining early members have passed the allotted age of man and, though still full of hope and courage, and possessed of ambition to keep in touch with the activities of life, must recognize that their work is substantially done and their records made up. Others have taken their places, many of whom saw first the light of day years after such as myself became identified with our society. Such reflections on the inevitable consequences of the flight of time are not altogether pleasant to indulge in and it would, perhaps, be out of place to pursue them at this time and I will not do so.

In the past five years we have, with much gratification, noted success of the policy of holding the annual meetings of the association in different parts of the state. As was supposed would be the case, it has worked an increase of membership, and has noticeably stimulated appreciation of the importance of the society and what it stands for, as expressed in its constitution in the words "The object of the Association is to maintain the honor and dignity and increase the usefulness of the profession of law."

One of the regular features of such a meeting as this is an address by the president whose term of office is about to expire. The high honor conferred upon the incumbent by his having been chosen chief executive officer of the society for a brief period, carries with it the opportunity, pleasure and duty of delivering such an address. I assure you that I highly

appreciate the honor conferred upon me and with these prefatory remarks will briefly respond to such duty.

The time which can well be devoted to the particular feature of our meeting will not admit of dealing with more than one subject, nor one which would necessitate any very lengthy treatment.

Because of the ground which has been quite exhaustively covered by my predecessors, it has not been altogether free from difficulty to settle upon a subject which, it seemed, could be interestingly and helpfully dealt with.

Much, but not too much, has been said on other occasions respecting the importance and dignity of the profession, the high rank of the men who have vindicated such importance by their eminent services in the particular field and others, and the essentials to a proper performance of the obligations of an attorney; all having for their substructure the fundamental that a licensed lawyer is a vital arm of the court, holding an office, primarily, to assist in the administration of justice, to the end that, as economically, speedily and certainly as practicable, wrongs may be prevented or redressed by the remedies provided by law. I could not well say more than has heretofore been very well said by my predecessors on that subject. The whole field of professional duty is concisely covered by the pledge which, in recent years, has been required as a condition of admission to the Bar. That pledge may well be recited at every meeting of the Association, to the end that it may be kept in mind as the guide for professional footsteps. It is one of the significant effects of the influence of our society that such pledge was so phrased as to picture in plain, concise language, the whole scope of an attorney's duty. I will venture your approval of repeating it at this time.

I do solemnly swear:

I will support the constitution of the United States and the constitution of the state of Wisconsin;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, or any defense, except such as I believe to be honestly debatable under the law of the land;

I will employ, for the purpose of maintaining the causes

confided to me, such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law.

I will maintain the confidence and preserve inviolate the secrets of my client and will accept no compensation in connection with his business except from him or with his knowledge and approval.

I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged.

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice. So help me God.

Much has been said, and too much could, probably, not be said, respecting the influence the Bar should have in perfecting methods for safeguarding personal and property rights, promoting the public welfare and vitalizing such methods by securing conservative, plain, practical written laws; and respecting whether the high and efficient position the Bar should occupy in that regard has been attained in the past, and, if not, the reason therefor and the remedy. That, certainly, is a very fruitful subject for study. It is one of the most appropriate subjects, therefore, by this Association, in harmony with its fundamental purpose to "increase the usefulness and influence of the profession of the law." But the ground has been so well cultivated by my predecessors, I have thought best to pass it, by reaffirming what they have said, pointing to the obligations of the professional office as heretofore indicated, and suggesting that strict fidelity thereto will go farther than anything else in winning the confidence of the people. That is necessary to efficient leadership in initiating progressive measures for the promotion of the public welfare and incorporating the same into written law.

Passing the subjects referred to and others which have received my attention, I came to settle upon one, which, in my judgment, has always been and must continue to be, of paramount importance in our form of government. On account of the world disturbance and apparent widespread inclination to substitute such form, in whole or substantially, for other systems, the subject I shall treat is now, it seems, of greater importance than ever before. The more the nations

of the world turn to our system of a constitutional democracy for a model, the more we should appreciate its principles ourselves and strive to maintain them. Vitalization of such principles by law, in harmony therewith, administered with courage by all departments of the government, particularly by the courts, is an absolute essential to the maintenance of the liberty and happiness of the people. The burden and responsibility in that regard rests, largely, with our profession. In no way can its honor and dignity and usefulness be more significantly vindicated, and worthwhile leadership in civil affairs be merited and won, than by understanding, appreciating and inculcating the benefits and the necessity of our system of written constitutions, efficiently prescribing the principles essential to a safe government by the people, of the people and for the people. Without it, as experience shows, a democratic republican form of government would quite likely be unsuitable to human needs and be destructively administered, involving natural rights in constant jeopardy. With these thoughts in mind I concluded to make the dominant feature of this address,—The nature and importance of a written constitution for a people's representative system of government. That contemplates dealing with a constitution, defining, in general, natural rights and limiting the activities in respect thereto, as deemed essential to the permanence of a government of, by and for the people, the safety of those rights from outside encroachment and from self impairment or destruction. I will briefly treat that subject. It is too comprehensive to be dealt with other than in a quite general way, in the time I feel warranted in devoting thereto.

As before suggested, at no period has the great work of the fathers of our system seemed more important than in these troublesome times. As I had occasion to say on another occasion which is recorded in the books, we need to sit anew, in thought, at the feet of the fathers, revive knowledge that the result of their work was wrought out by a body of men, representing the great seats of learning of the English speaking race of two hemispheres and, otherwise, men of broad experience, many of whom had been students of all federal systems of government of prior ages in preparation for their special task. As the historian of their work declared "The goodliest fellowship of lawgivers whereof the world has record,"—a body dominated by specialists inspired "By en-

nobling love for their fellowmen" and the thought that they wrought not for the then age alone, but for the ages to come, and so sought to avoid the infirmities of previous systems of government by the people, by carefully providing for efficient safeguards and that no change, in letter or spirit, should occur except in a particular and most deliberate and conservative way.

Modern conditions, independently of those involved in the present world war, have suggested and, perhaps, justified many unprecedented regulations and restrictions, giving rise to serious thought as to whether some of them do not, at least, press dangerously upon the boundaries of our scheme of government. For the purpose of this paper I will not venture to pass judgment in respect thereto. It is sufficient for the occasion that such scheme involves, in connection with a declaration of human rights, general as well as particular limitations of interferences therewith. There has been such tendency, without design, generally speaking, to view such limitations lightly at times and ignore them at others, by well intentioned men,—their convictions as to public welfare, impairing their vision as to fundamental restraints, or warping their judgment as to necessity and duty of being governed thereby as the supreme will of the people,—that they were inclined to maintain their personal notions, of the power of the people, speaking by those presently entrusted with authority, and to use novel methods to that end to the sacrifice of interfering fundamental principles, rather than to stand firmly by the latter, regardless of the former. There has also been a tendency with some to incline to the view that such principles should give way to supposed exigencies of war. These and other things suggest thought, and not perhaps entirely without warrant, that there has been, or is some danger of, drifting away from our original anchorage and supposed correct ideals. The key thereto may be found in want of comprehension of the adaptability of the constitution to new situations as they may, from time to time, arise.

In the circumstance referred to, we may well challenge attention to the point of view of the fathers of our system, and importance of avoiding any fatal departure therefrom, by the words of the foremost orator of our country of the long ago pronounced on a memorable occasion.

"When the mariner has been tossed for many days in thick



weather and on an unknown sea, he naturally avails himself of the first pause in the storm, the earliest glance of the sun, to take his latitude and ascertain how far the elements have driven him from his course."

The extraordinary situation which has confronted our people for the past few years has naturally led to surveys being taken by some, from the mountain top, as it were, and by others from the valley. Time has elapsed for reflection and for inclination to look at the situation from something like a calm sea level, enabling us to judge of our true situation.

We may well profit by the wisdom expressed in the quoted words, and hesitate in order to take our bearings, before time shall permit drifting into dangers from which rescue would be difficult if not impossible. It would seem that our viewpoint in that respect should be that which the fathers of our system occupied in the beginning.

Far too little, I fear, is heard about the real viewpoint referred to, which is liable to result in dangerous want of appreciation thereof. There should be no impatience with, and no forgetfulness of, its time honored and, by the wisdom of the fathers, authoritative exposition which I fear at times has been to some, exercising influence and power, below the horizon of efficient vision.

The thought expressed springs from the circumstances that significant figures in national affairs, and would be creators of public sentiment, by written and oral expressions and by actions which have been received with some favor, have declared or suggested that the great charter of our liberties—made by Washington, Franklin, Hamilton, Madison and the rest, no equal of whom in any age or county ever dealt with the destinies of a nation,—and the lesser charter modeled after it for our particular commonwealth, should yield to the exigencies of the hour, as thought to exist by agencies of the people, instead of, as was evidently designed, such agencies be guided, restrained and effectively fenced about thereby.

The situation referred to, naturally gives rise to misgivings as to whether there is not, as before in effect suggested, some tendency to drift away from that foundation idea upon which our governmental institutions were built, indicated by the great constitutional expounder in *Marbury v. Madison*, 1 Cr. 137. "The exercise of this original right" to make a system of government "is a very great exertion, nor can it, nor ought

it to be frequently repeated. The principles, therefore, so established are deemed fundamental, and as the authority from which they proceed is supreme, and can seldom act, they are designed to be permanent. The constitution is not only the paramount law, but is absolutely unchangeable by ordinary means. Laws adaptable to it are legitimate, and otherwise not. It was designed to govern the legislature and the Courts as well."

Therefore we should make our survey in the light of the basic concepts of the National and State constitutions, that each in its particular field was designed to be the supreme mandate, and that such dignity is essential to the efficiency of our system, and should view with disfavor any contrary notion;—any idea that such supremacy may be rightfully or safely suspended to satisfy any supposed necessities of the hour. To that end we need to have a renewal of appreciation of, and veneration for, and fidelity to the fundamental law. It, with an efficient judiciary, true to its function to stand guard at the limits prescribed, constantly and effectually barring every effort to pass them, is necessary to the maintenance of enjoyable existence under a form of government where sovereign power rests with the body of the people. Without that, there might be substituted for the unbridled power of a personal sovereign or of an inefficiently limited monarchical power, one liable to be quite as dangerous,—the authority of the sovereignty of a class,—a sovereignty where the minority, or even the majority might be powerless to defend inherent rights except by the uncertain and perilous method of violence and revolution.

It was no exaggerated notion of the importance to our happiness of the constitution which inspired Webster when, in his declining years, looking backward over a life work in public affairs nearly ended, he said, directly to the select party of the occasion, and indirectly to the whole people, "I confess that I love the constitution of my country, that I have a passion for it; that I cherish it day and night; that I live on its healthful saving influence, and that I trust never, never, to cease to heed it till I go to the grave of my fathers. I do not suppose I am born to any considerable destiny, but my destiny, whatever it may be, attaches me to the constitution of the country. I desire not to outlive it. I desire to render it some service and on the modest headstone that shall mark

my grave I wish no other epitaph than this, 'While he lived he did what he could for the constitution of his country.' "

Who will venture to say that the importance of the constitution is of less significance now than when Webster's conception of it was thus painted. Instead of being of less importance, it seems to have grown in that regard, commensurate with the growth of the nation in extent of territory, population and wealth and its influence upon the people of other nations, particularly those who are inclined to turn in our direction for studies in civil government. As was indicated by the great statesman, to uphold the constitution, in all its integrity, according to the plan of its framers, is worthy of the highest ambition. To do so is a most certain method of winning the enduring gratitude of mankind, while to discredit it has never won, and, I believe, will never win, for anyone, worthwhile, enduring fame.

How clearly the framers of our state constitution sensed the danger to inherent rights of the people by their becoming lukewarm as to the importance of its restraints; with what wisdom, after, as concisely and securely as practicable, entrenching the essentials of human liberty,—looking into the future with clear conception and appreciation of the necessity for constant vigilance in order to certainly guard and preserve such essentials, they incorporated in their work that striking admonition: "The blessings of a free government can only be maintained by a firm adherence to justice, moderation, temperance, frugality and virtue, and by frequent recurrence to fundamental principles."

Thus did the fathers sense the danger of there arising, disinclination to submit to reasonable restraints upon the invasion of inherent rights. We must, it seems, in order to tie securely to the safe anchorage where they placed us, firmly combat all suggestions which contemplate,—regardless or without proper appreciation of, such restraints,—legislation or new constructions, unduly interfering with guaranteed rights. Having done that our anchorage at the foundation of our system will be secure and we can survey what has been done and what may be proposed to be done, having regard for the boundaries beyond which stand those dangers which have always been the greatest menace of a government by the people and against which a written constitution is designed to be an impassable fortification.

Having taken our bearings and planted our feet firmly at the point of division between the old system,—under which individual members of society were not regarded as possessing any rights, only privileges extended by grace, and under which all so-called privileges which had come to be enjoyed, commonly, and regarded as essential to individual well being, were dignified as birthrights, rights not dependent upon any earthly power, and above interference except by legislative regulation, and that only for the purpose of conservation and effectiveness,—the point of substitution of the reasonably regulated will of the majority, for that of the arbitrary will of a person or of a ruling class, springing from the theory of the omnipotence of an earthly representative of divinity, possessing competency to take away, or render the enjoyment of those rights so burdensome as to make life and property insecure, calling for remedies in behalf of oppressed classes affordable only by counter oppression, to the point of exhaustion of human endurance, resulting in another upheaval of a similar character,—revolution following revolution,—with the ordinary characteristics of such convulsions,—it is seen that a basic law before which all classes should be required to bow, as the supreme, infallible arbiter between any thereof, however numerous, and anyone however inconsequential and humble,—a law of such dignity that, as our Supreme Court said at an early day, “No one can be so high as to be above its authority, and no one can be so low as to be beneath its protection,” guarding the one from encroachments by the other,—was wisely conceived to be necessary and was established, covering, in general terms, all of such rights, and particularizing as to some of the most significant of them, and guaranteeing their inviolability. It was designed to be, as of necessity, a power from which there could be no appeal except to the people as a whole in a manner particularly provided. Therein, in contemplation of the fathers, rests efficient protection of those rights, referred to in the opening lines of the Federal Constitution, encompassing the ideas expressed in the declaration of rights contained in the Declaration of Independence; and the declaration in our state constitution. The central thought dominating all, and around and upon which the whole was constructed, is this, as expressed in our state constitution: “All men are born equally free and independent and have certain inherent rights;

among these are life, liberty and the pursuit of happiness; to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed."

In those few words is found the very substructure of our system, in harmony with the declaration of independence and without substantial change of language. They contain an expression of the primary object of the fundamental law and of the importance of its maintenance. Standing alone, if firmly administered, they fully guarantee inherent rights, it being appreciated that the propriety of all minor laws which are within the scope of the declaration and the field of appropriateness of measures to conserve and promote, is primarily for legislative agencies to determine, but, ultimately, is for the special power created to pass upon such matters, to decide.

Note the ideas expressed in the declaration. The first is, not that all men are born equal as regards mental capabilities or worldly prospects; but "Equally free," each equal with any other as regards going where he will and doing what he may and being exempt from interference as to liberty or property, so long as he obeys the law of the land and does not invade the province of any other to do likewise. The second is that, one person shall be regarded as equal with any other, not by the grace of any earthly power, but as a natural inheritance, incident to existence, and possessed among others, not enumerated, of these rights of predominant importance, the right to life, the right to liberty, and the right to the pursuit of happiness and to render all such rights secure—not to obtain any of them,—to prevent their being taken away or destructively impaired by interferences by form of law; "governments are instituted among men," "deriving"—not all powers which the majority of men may attempt to exercise through legislative agencies or otherwise; but all "just powers,"—such as are consistent with the preservation, inviolate, of nature's endowment—"from the consent of the governed." That those invaluable guaranties are thus embodied in the fundamental law, covering the vast field of police power to which a large part of modern state legislation is referable and must continue to be, and that such power is limited, in the main, by such guaranties, indicates the vast importance of the constitution. That power, exercised reasonably, is essential to the very purpose of the constitution, yet, unrestrained, it might be so exercised as to defeat such pur-

pose. The fact that the power so beneficial, so necessary, to the public welfare is found, not only guaranteed in the basic law, but, so limited therein, that, by proper administration, to effectually prevent its abuse, significantly evidences the importance thereof and of the constitution itself.

That part of the constitution to which we have thus given dominant prominence, is its most important feature. Other parts are mainly details of the field covered by the general declaration which has, in times past, been treated by some writers—even jurists—as having been used for mere euphony—as a mere collection of words, pleasing to the ear—a sort of rhetorical flourish—sometimes referred to as glittering generalities, signifying nothing in particular and serving no purpose but that of embellishment like the ornamentation at the capital of a column, giving a striking touch of beauty to the architecture, but adding little or nothing to the real strength or usefulness of the structure it supports. But such, now, is well recognized not to be the case. The words,—though to the mere scholastic view, as indicated by dealings therewith by some writers, not imbued with the real logic of our system, only exhibiting exquisitely turned phrasings,—contain the very vital force of the whole instrument which they introduce. They direct the way to and limit the scope of all that is legitimate in a vast field for legislative interference. They harmonize with and fill out all gaps between the express limitations which follow, making an unbroken encirclement of the scope of law making power, so that no legislative enactment can be rightly said to be outside of the constitutional test for legitimacy. Those regulations which are reasonable under all the circumstances, because fairly calculated to promote that “for which governments are instituted among men,” are consistent with the broad general guaranty. Those which are destructive of such rights and so are unreasonable, are not consistent therewith. Hence, all enactments within the field of police power must answer for legitimacy at the bar of reason, as viewed in the ultimate by the tribunal empowered to apply the test in that regard,—not because of any power of judicial disapproval for mere unreasonableness,—but because of the plainly implied fundamental inhibition of interferences of such character as to be inimical to natural rights.

As our Supreme Court has made very plain, the idea that

the police power is in a field outside of and above the constitution, as has been suggested by some writers, is a great mistake. At every line of the fundamental law, by necessary implication, springing from the opening clause, is breathed, in spirit, the doctrine that the constitution condemns every enactment which violates those rights for the maintenance of which the government was founded. An eminent judicial writer on the subject declared that "positive laws are invalid which contravene the law of nature." Our courts have appealed to its principles and have been governed by its precepts.

Mr. Justice Miller once said, speaking for the Federal Supreme Court:

"It must be conceded that there are rights \* \* \* beyond the control of the state. A government which recognizes no such rights, which holds the lives, the liberty and the property of its citizens subject, at all times to the absolute disposition and unlimited control of even the most despotic depository of power, is, after all, a despotism."

Mr. Justice Brown, in *Lawton v. State*, 152 U. S. 133, remarked that:

"It is sufficient to say that there are certain immutable principles of justice which inhere in the very idea of a free government, which no member of the union may disregard \* \* \*. The legislature may not \* \* \* impose unusual and unnecessary restrictions upon lawful occupations. \* \* \* Its determination as to what is a proper exercise of the police power \* \* \* is subject to the supervision of the courts."

Our court has often expressed itself in harmony with the foregoing, so there should be no doubting the rule of reason, rightly understood, under the constitution. The fundamental law, in effect, commands it and created a tribunal to determine its boundaries. There should be no lack of courage to enable one to maintain that and depend on the sober judgment of the people for vindication of his conduct, which is sure to prevail. In so doing, all which is inimical to the public welfare will receive just condemnation,—all which is promotive thereof will be given its proper dignity, and the supremacy of the constitution will be maintained, as was intended, and is essential to certain enjoyable existence under our system.

What has been said suggests the danger involved in impatience with, or negligent, or otherwise, disregard of con-

stitutional restraints. Individuals, entrusted with opportunity to participate in making law, sometimes, by well intended schemes, seem to proceed upon the theory, that everyone may be compelled to live and move and have his being, acquire and dispose of or devote his property, according to a standard fixed by law,—involving regulations to such an extent as to seriously jeopardize inherent rights and that incentive to individual improvement and advancement which has always been the main-spring of human progress, so that everything which promotes life, liberty and the pursuit of happiness would be held, permissively, and as much by mere grace as was the case under the feudal system during the days of its most odious features—in the whole, the entire purpose of the displacement of the ancient systems of government by the rule of the people under constitutional restraints to guard against the danger of social suicide, would go down in utter failure. Thus the great importance of the constitution, declaring the possession of inherent rights and guaranteeing their safety from impairment, and the necessity for such guaranty, and an independent instrumentality to enforce it, is plainly apparent. Of course, those rights may, and have been, to a great extent, legitimately regulated and must be in the interest of the common welfare, but always to conserve, never to impair or take away. To prevent the latter is one of the most important functions of the fundamental law.

It will be seen that nothing has been said which should be taken as questioning the propriety or wisdom, on constitutional grounds, of any legislation not expressly prohibited, existing or proposed, which does or would reasonably promote the common good. The field for such legislation is as limitless as reason itself, applied to the conditions to be dealt with. As conditions change, the need or advisability of such legislation must necessarily change also. An important feature of the constitution, as to police authority, is that it was designed to be adaptable to present and future. It must be remembered that the end being legitimate, because within the broad scope of the constitution, all legislative means, reasonably appropriate to promote such end and not prohibited, are also legitimate. Thus it will be appreciated that means which could not stand the test of the fundamental law at one time might easily do so at another, owing to a change of circumstances.



So it happens that we have much valuable written law to-day which the public welfare demanded or rendered reasonably necessary or advisable, that is proof against all constitutional objections, but which might not have been in former times—the elasticity of the basic law, as applied to the particular field, rendering it adaptable, without change, to deal with the new situation. This important feature of adaptability, perhaps, has not always been understood, leading to some impatience with supposed constitutional restraints where none existed, up to the border line between that which conserves inherent rights and that which destroys or materially impairs them.

So we see the importance of a revival of appreciation of the purpose, and the power, of the fundamental declaration of the great principles of human liberty, within the scope of which regulative activity, may go on. It is the only certain protection the people have against invasion of inherent rights, which might otherwise be seriously, even intolerably, disturbed. With it properly understood and vitalized by the special authority in respect thereto, a single person can stand his ground against the many as regards any regulation in the form of law, destructive of his life, his liberty, his property or his happiness. The only weapon needed is the constitution of his country. He does not need to wield that himself. It provides the instrumentality therefor which is irresistible, if the courts do their duty. May appreciation of their great trust and competency to discharge it never fail! In them is centered the hope of the republic for the preservation and proper administration of the constitution. In them is lodged the power to efficiently stand for government by rational laws, preserving life, liberty and the pursuit of happiness, effectually guarding against government by irrational laws, destroying those birthrights or dealing with them again as mere privileges, subject to be taken away as only existing by grace.

As we thus survey the field dealt with, we do not wonder at the attitude of the great constitutional teacher of the long ago as he looked backward, reflectively, and forward, contemplatively, to the possibilities of the future. As we do so we seem to hear his words ringing out again to the nation to stimulate, strengthening the intrenchment at the lines he maintained through a long and useful life; "I confess that I love the constitution of my country. I have a passion for it,

that I cherish it day and night; that I live on its healthful saving influence. I trust never, never to cease to heed it till I go to the grave of my fathers \* \* \*. I desire not to outlive it. I desire to render it some service, and on the modest headstone that shall mark my grave I wish no other epitaph than this: 'While he lived he did what he could for the constitution of his cotntry.' "

Those words, as a reminder to the people for all time might well be inscribed upon the walls, so conspicuously as to constantly challenge attention, in every judicial, legislative, educational and editorial presence in the land, to the end that the real purpose of the constitution might be more generally appreciated; that law givers might do so and perform without reluctance, rather with real pleasure, the duty of testing their work by the constitution at every step; that devoid of any sense of regrettable restraint and disposition to minimize as much as possible, courts might always approach and perform their duty of thus testing written enactments, with courage equal to the occasion,—that constructive authority might be exercised with such care as to incline it to resolve very serious doubts as to unconstitutionality in the affirmative, while revising authority, with like fidelity to duty, might resolve reasonable doubts as to legitimacy in favor of legislative judgment, and that the press might, at all times, commend such performance of duty—not discredit it and favor some new attempt in the line of aggression or some radical change in fundamentals so as to permit the particular interference. There has been very little of the latter in our own state. The press has, commonly, inculcated respect for the constitution, commended those in authority for enforcing it, in letter and spirit, and cautioned against inconsiderate or hasty changes of it.

The power to efficiently test legislative enactments by constitutional restraints, thus giving real vitality to the rights recognized and declared in the fundamental law, which significantly distinguishes our constitutional democracy from prior forms of government,—the feature which, though sometimes condemned and often misunderstood,—is the one which has challenged the particular attention and won the most unstinted praise of the greatest statesmen and students of the English speaking people abroad. Gladstone characterized our fundamental law as expounded by Chief Justice Marshall as

being "the most wonderful work ever struck off at a given time by the brain and purpose of men."

Mr. Bryce, one of the best authorities on constitutional law, said that our government was the first one "founded on a complete scientific basis."

Lord Brougham spoke of the particular feature of our constitution, thus: "The power of the Judiciary to prevent either the state legislature or congress from overstepping the limits of the constitution is the greatest refinement in social quality to which any set of circumstances has ever given rise or to which any age has ever given birth." Lord Salisbury said of it: "I confess I do not often envy the United States, but there is one feature in their institution which appears to me the subject of the greatest envy—their magnificent institution of a Supreme Court. In the United States, if parliament passes any measure inconsistent with the constitution of the country, there exists a court which will negative it, and that gives stability to the institutions of the country which under the system of vague and mysterious promises here we look for in vain."

It would be a severe commentary on the national constitution, if it does not afford the government power to do the things reasonably determined by its chosen agencies to be essential to maintain its existence and the liberties of its people, even to the extent of waging war abroad as well as at home, and to use all appropriate means for rendering its efforts in that regard, successful. What I have said of it, would be a gross exaggeration, if it does not confer the amplest of powers of the nature we have referred to. It plainly vests in the president and congress such powers and binds the whole people to stand loyally by the decision reached. What was said on that subject by Mr. Hughes before the last meeting of the American Bar Association and by Mr. Root in his address at Chicago on the 15th day of last September, merits our unqualified approval.

The great power to make war and to use the means essential to its success,—whether the war be defensive or offensive, at home or abroad,—when determined to be necessary, by competent authority, to maintain the national honor, dignity and safety,—is inherent in the power to form a government. No government could long exist or could preserve the liberties of its people without such power, and supreme authority to

decide upon the necessity of and means for its exercise, and command and receive the support of its people and submission of all within its protection. True, as said by Mr. Root, "One of the cardinal objects of the union \* \* \* was to create a lawful authority whose decision and action upon" the "momentous question" of whether to wage war or not should be binding on all. It was intended to be and is comprehended in the declaration of the framers of the constitution embodied therein. "We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution." That declaration is vitalized by express provisions for all the essentials of trial, if necessary, of international issues by wager of battle. The great power to make war, as a last resort, in the judgment of the people through their chosen servants, and to use all reasonably appropriate means to effect success, is within the broad scope of the constitution as defined by Chief Justice Marshall in *McCulloch vs. Maryland*, 4 Wheaton, 316, 420. "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution are constitutional." There can be no doubt that preservation of the honor and existence of the nation, and liberties of its people, are legitimate and within the scope of the constitution. It necessarily follows that there can be no reasonable doubt of war, at home or abroad, when necessary, and all reasonable means of rendering the war successful, which are appropriate, are plainly adapted to that end, and are not prohibited, but consist with the letter and spirit of the constitution, come within the express and implied powers of the fundamental law. Furthermore, it cannot be doubted that the power to pass upon the necessity for war and the appropriateness of means for carrying it on to success, are vested, as before indicated, subject to no restraint so long as exercised within the broad scope of the fundamental law, and that is so broad that support of the decision reached is a requirement of good citizenship.

Thus, a feature of the National Constitution of vast importance is the one which provides for using the whole power

of the people, in war, whenever necessary to vindicate National honor or existence, and provides the instrumentalities for determining when that momentous power shall be exercised and the means for successfully exercising it. We cannot too emphatically, on the one hand, condemn the idea that the restraints of the constitution are inconsistent with this,—that, though suitable to a time of peace, they are not, to permit the government to cope with the great emergency it is now required to deal with, and should be treated as superseded, for the time being, from the necessities of the case; and on the other hand, condemn the idea that such restraints justify opposition to use of the means legitimately determined to be appropriate and necessary to enable the government to successfully cope with the present great emergency. Both spring from misconception of the real logic of the constitution. Those who indulge in such erroneous ideas, commonly, impatiently challenge opposition thereto. We should have the courage to firmly accept such challenge and to repel both the notion that the constitution is a hindrance to coping successfully with the necessities of war when essential to vindication of its purpose, and so should give way for the time being, and the idea that justification can be found therein for opposition to or criticism of the use of any appropriate means, reasonably necessary under all the circumstances and legitimately determined to be so, to vindicate such purpose.

No emergency can be so grave as to create a condition, above the constitution to deal with successfully. None can arise requiring or justifying overturning the constitution of our country or blinding us, even temporarily, to its wise safeguards. Inherent rights of life, liberty and the pursuit of happiness exist and are just as sacred and just as essential to worth-while existence, if not more so, in such an emergency as our country is now required to deal with, as in normal times. A fundamental intrenchment of such rights in a written constitution with an independent, efficient instrumentality, answerable only to the people, to vitalize them, rather grows in importance with increasing danger to national life, than is lessened thereby. Consistent therewith the constitution, as we have said, affords every reasonable facility for national defense and preservation. It is absolutely essential to the safety of democracy,—a system of government by the people, and for the people,—government by the consent of

the governed, under wise safeguards prescribed by them to prevent partial or total destruction of the rights for the preservation and conservation of which governments are instituted among men,—that such power should exist. The purpose of the constitution, by necessary inference, includes a grant of that broad power. Note the comprehensive scope of such purpose,—“To form a more perfect union, establish domestic tranquility, provide for the common defense, promote the general welfare and secure the blessings of liberty to ourselves and our posterity.” To that end, the people established our constitution basing it upon, for a substructure, the existence of inherent rights, and expressly or impliedly armed their government with all instrumentalities appropriate to its maintenance in war as well as in peace, in harmony with the general purpose. Its safety depends upon upholding the constitution with the independent instrumentality created by it to give it the breath of life. Without that, though, by the sacrifice of thousands of lives and billions of treasure, the world might be made safe for democracy, democracy might not be made safe for the world. What will it profit humanity to have the former without the latter? Moreover, how can the one safely exist without the other? Those inquiries strikingly suggest the importance of the fundamental law. Without democracy being made safe for the world by such law efficiently administered, democracy, as history teaches and as we now have strikingly in evidence in the condition of unhappy Russia, might, as before suggested, be characterized by excesses and oppression of the minority by the majority, as under the most odious despotism of which history furnishes a record, and even the minority, intrenched in wealth and organized power, might impoverish and enslave the majority to as great a degree as in the past or at present in any country having a monarchial or autocratic form of Government. It were better that the nation suffer to the limit of endurance and the basic principles of the constitution be efficiently preserved, as the substructure of a new creation, than that it should survive and such principles be irretrievably sacrificed. Beyond its boundaries lie anarchy and destruction; within its boundaries exists the possibility of all the earthly happiness which the human race has capacity to acquire. Within, one can see the sunshine of individual and collective contentment in the social state. Beyond, one can see the fires of national

destruction of all which makes life worth living for, hear the lashing by the furies, and the lamentations of the sufferers. So, we repeat, no emergency can be so great as to require or justify subversion of the constitution, or, rightly understood, will give rise to the thought that it does not possess within its broad scope the most complete power to maintain national integrity and authority; thus vindicating the importance of its preservation and its supremacy.

We are conscious of not having much more than expressed, in a very general way the vast importance of the fundamental law. To discuss it at length and in detail would take the time which could well be devoted to a series of papers. There should be no lack of that moral strength essential to enable those in authority to stand efficiently for its purpose, unmoved by any, even popular, desire to accomplish interferences which it condemns, and abide by the sober judgment which, in the end, is sure to prevail. In so doing, all which is inimical to the public welfare will receive effectual disapproval. All which is promotive thereof will be given its proper dignity and the supremacy of the constitution will be maintained as was intended by the fathers and is essential to the enjoyable maintenance of our social state.

I, too, confess that I love it, that I have a passion for it; that I cherish it, day and night; that I live on its healthful saving influence; that I trust never, never to cease to heed it until I go to the grave of my fathers that I desire not to survive it, and that, in my long public career, I have done what I could for it, to lead the people to venerate it, the Legislatures to willingly be guided by it and the Courts to bear its flag high up above any danger of assaults upon it. In the ultimate, whether it shall endure and fully perform the function designed by the fathers for it, depend upon the Courts. May they never fail in that regard! In the beautiful sentiment expressed by one in our Supreme Court, who later became its Chief Justice and whom I had the honor to succeed: "When discord, violence and anarchy shall succeed to law and order; when people and public officers shall depart from the constitution and desert the Ship of State," if such time shall ever come, "I have a hope that the last glimpse that will be caught of organized Government will be the judiciary, that Courts may be seen as long as any vestige of a state shall remain, still ready to direct, still speaking the law with an even mind,

dispensing justice with an even hand, sitting serene and unmoved above the influence of fear and of faction, still abiding by that motto so peculiarly their own '*Fiat justitia ruat coelum.*'"

May I be permitted to close with this sentiment. The constitution of our Country, may it survive through the eternity of years,—so long as time shall last,—never losing its vitality, through the heart throbs of the Judiciary, to guard our birthrights; and may all come to, more fully than ever, appreciate its overshadowing, supreme importance to the public welfare.



ADDRESS OF BURTON HANSON  
BEFORE THE WISCONSIN STATE BAR ASSOCIATION AT ITS  
ANNUAL MEETING HELD AT OSHKOSH, WEDNESDAY  
AFTERNOON, JUNE 28, 1916.

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SUBJECT—BENJAMIN FRANKLIN.

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You are all familiar with that familiar verse of James Whitcomb Riley:

“I’ve got the hives and a new straw hat  
And I’ve come back home where my beau lives at.”

I haven’t the hives, or a new straw hat, but I’ve come back home to dear old Winnebago, my native County. The memories of our childhood days seem to be revived, and become more precious as we advance beyond the half century mark. And while in the stress and anxiety of our daily round of responsibilities, we are apt to forget these far-off days, yet when we recall them it seems but yesterday since we lived them. And although most of

“The names we loved to hear  
Have been carved for many a year  
On the tomb,”

we recall all without the slightest effort. Who that was born and reared in this County can forget Pulling, Gary, Cleveland, Bouck, Felker, Finch, Weisbrod and Barber! They were a noble group of men, all famous in their day, and now all at rest; but their places are secure in the memory and esteem of everyone who ever knew them. And I prize it as one of the durable satisfactions of my life that I am privileged to return here on this occasion, and make mention of this galaxy of illustrious names.

We are constantly admonished by the Declaration of Rights of our State Constitution that “the blessings of a free government can only be maintained by a firm adherence to justice, moderation, temperance, frugality and virtue, and by frequent recurrence to fundamental principles.” I fear that in recent years, in common with the people of this generation



**BURTON HANSON.**



everywhere, we are not heeding this wholesome admonition of our fathers. And because this Declaration of our Constitution is but a recast of the life and teachings of Franklin, I have thought it not out of place to review before this gathering of lawyers, the career of this great philosopher, diplomat and statesman.

There is no longer first-hand information concerning Franklin. The story of his life has been told so often, that it would be presumptuous for anyone to attempt to say anything that is not known to every student of American history. But the life of this great man was so unusual that it may be told again and again with both interest and profit; and, at the risk of saying nothing new, I will recount the achievements of Benjamin Franklin, who was born in Boston, Massachusetts, January 17, 1706, twenty-six years before Washington saw the light of day. He was the fifteenth of seventeen children. In his autobiography, he states that it was not unusual for fifteen to be seated at their meal at the same time, and often more when friends or relatives were with them. Franklin came from typical English stock. For centuries, his ancestors lived on a small freehold at Ecton, England, and, so far as record or tradition runs, the eldest son in each generation had been bred and trained a blacksmith. His forbears were all non-conformists, and were among the early Protestants who held their faith through the terrors of the reign of Bloody Mary. That he might be free in the peaceful exercise of his religious beliefs, Josiah Franklin, the father of Benjamin, migrated to Boston, in 1682. Here he took up the work of making soap and candles to support his large family. He was noted for his sound understanding and solid judgment in prudential matters, both in private and public affairs, and was frequently consulted by his neighbors and those of the church he belonged to, who entertained great respect for his judgment and advice. Both he and his wife had excellent constitutions. Franklin, in speaking of them says he never knew either of them to have any sickness, but that of which they died; he at 89, and she at 85 years of age. They lie buried together at Boston, where, some years after their death, Franklin placed a marble over their grave, with this inscription:

## JOSIAH FRANKLIN

and

ABIAH, his wife,

Lie here interred.

They lived lovingly together in wedlock,

Fifty-five years;

And without an estate, or any gainful employment,

By constant labor, and honest industry,

(With God's blessing),

Maintained a large family comfortably;

And brought up thirteen children and seven grandchildren

Reputably.

From this instance, reader,

Be encouraged to diligence in thy calling,

And distrust not Providence.

He was a pious and prudent man,

She a discreet and virtuous woman.

Their youngest son,

In filial regard to their memory,

Places this stone.

J. F. born 1655; died 1744. Aet. 89.

A. F. born 1667; died 1752. Aet. 85.

In Franklin's youth, Boston was a young scrambling village in a new country, and to maintain existence everyone was forced to do something. The unproductive period of boyhood was, therefore, necessarily cut short. All of Franklin's elder brothers were early apprenticed to tradesmen, excepting James, who became a printer. When he was eight years of age, Franklin was sent to school, where he remained less than a year. This was the extent of his education in a school. His father intended him for the ministry, but at this time he formed the acquaintance of the sailors about the village, and being greatly allured by their stories of adventure, he determined to run away and become a sailor. Hearing of this, his father put him at work in his soap factory, where he remained until his thirteenth year, when he was bound or apprenticed to his brother James, during minority, to learn the printer's trade. Handling types aroused a boyish ambition to see himself in print, and very soon he was writing both prose and poetry. But he abandoned poetry, and later on in life, he congratulated himself on having escaped being either a poet or a clergyman. He daily practiced putting in

writing the results of his reading—writing articles on the leading events of his day, political, social and scientific. He thus early acquired the habit of stating himself clearly and succinctly. In his autobiography he states that there were very few books in Boston at this time, that it was the custom to borrow books of each other, and that he often could borrow a book for the night only, when he would sit up the entire night to read it, so that he might return it in the morning.

At this juncture, when he was about sixteen years of age, an event occurred which had a lasting influence on his life. He was inclined to contradiction and disputation. Nothing passed that he did not question, oftentimes ending in personal criticisms, which are always disagreeable. There was another bookish lad in town, by the name of John Collins, who was likewise disputatious, and their disputes at times became so fierce and personal that Franklin finally resolved to abandon the habit of disputing everything, and to pursue a method of expressing himself in terms of modest diffidence. He adopted the persuasive, rather than the contradictory method. Instead of giving the air of positiveness to an opinion, he conceived or apprehended a thing to be so and so. This habit he found to be of great advantage in persuading men to accept his views and adopt his measures. By the constant adherence to this resolve, made when a mere boy, he became one of the greatest diplomats of his time.

In 1720, when Franklin was fourteen years of age, and while he was under apprenticeship, his brother James started the publication of a newspaper, called "The New England Courant". The censorship of the newspapers—although there were but two or three published in the colonies at this time—was very strict, and James, having published articles that were objectionable to the authorities, was forbidden to further continue the publication of his paper. Thereupon, he cancelled the apprenticeship of his brother Benjamin, who, for the time, became the publisher. After a while, the censorship was removed, and James resumed the publication of his paper, but his brother Benjamin had secured what he had long yearned for, freedom from the domination of a very austere brother. He immediately stole away on board a sloop, that was lying in Boston harbor, bound for New York, where he landed in October, 1723. He was now past seventeen years of age.

He was an absolute stranger in New York, without the least recommendation, and scarcely any money in his pocket. He sought employment as a printer, but was unsuccessful. Hearing that there might be an opening in Philadelphia, he went there. You all know the story of his landing at the foot of Market Street, on a Sunday morning, poorly dressed, dirty from being so long in the boat, his spare clothing, shirts and stockings stuffed in his pockets, fatigued and hungry. Purchasing three loaves of bread, he walked up Market Street, with a loaf under each arm and munching a third. Passing by the house of a Mr. Reed, his daughter, who was standing at the door, appeared greatly amused at young Franklin's awkward and ridiculous appearance. Seven years afterwards, she became his wife. No ship ever brought a richer cargo to Philadelphia than the little sloop that disembarked the youthful Franklin, one hundred and ninety-three years ago. Contrast his entrance into that city, in 1723, at the age of seventeen, a poor, roving, unknown typesetter, with his return from France in 1784, the greatest of diplomats, honored by the leading universities of two continents, and more widely known than any other living man born on this side of the Atlantic. Franklin was the earliest example in this country of a poor, unknown boy, who won his way to fame by his own efforts. There have been many others since his day, who, by the same thrift and industry, have won distinction in the business world, as well as in the learned professions, and it adds greatly to the glory of our institutions that many of the foremost men and women of each generation have come from the humblest walks of life.

In Philadelphia, young Franklin soon found employment in one of the only two printing shops there. It soon developed that he far excelled, both in skill as a printer and in general knowledge and intelligence, the other printers, and, consequently, he soon attracted the attention of Sir William Keith, the Governor of the Province. Sir William persuaded Franklin to set up a printing establishment of his own, promising him the royal patronage, but Franklin did not have the necessary funds, so he set out for Boston, in April, 1724, to seek his father's co-operation. The independent old tallow chandler concluded that Governor Keith was a man of small discretion to favor a scheme of setting a mere boy of eighteen up in business, and withheld his support. So Franklin returned

to Philadelphia, with some small gifts as tokens of parental love, much good advice as to steady industry and prudent parsimony, but no cash in hand. Among the admonitions of his father at this time was a proverb of Solomon: "Seest thou a man diligent in his calling, he shall stand before kings". Franklin, later in life, in recalling this admonition, remarked that though he little thought at that time the truth of this proverb would ever be literally demonstrated in him, yet it was, for he had actually stood before five kings, and even had had the honor of sitting down with one, the King of Denmark.

Soon after his return from Boston, Governor Keith renewed his interest in Franklin, and finally persuaded him to go to London and purchase a printing press and type with funds which he undertook to advance. The day of sailing came, but the only message that Franklin was able to get from the Governor was that he had been very busy, and that the promised letters of credit and introduction to his London friends would be sent on board the vessel, but when out at sea, on opening the Governor's packages, there were no letters for Franklin. Landing in London, without money or friends, Franklin found employment as a printer. He remained there eighteen months. In some respects, it was a piece of good fortune that this year and a half of his life was lived in London, rather than in Philadelphia, for had he lived the same life in Philadelphia that he lived in London, his boyish indiscretion might have kept him long in ill repute among his fellow townsmen, then little tolerant of profligacy.

Fundamentally, Franklin from his early childhood was sound. His instincts and leanings were all in the direction of decent things and right living. And it is to his credit that notwithstanding the indiscretions of his London life, his moral sense predominated, and then, as forever thereafter, the good things of his life far out-measured these boyish indiscretions. It is said that great men make great mistakes, but Franklin never made the same mistake twice. He had a conscience, and it was alert. He practiced self examination, and when he discovered his fault or sin, he put it behind him. He was fully conscious of the errors he had committed while in London, and the return voyage to Philadelphia afforded him the opportunity of reviewing his past life and making high resolves for the future. It was on this voyage that he formulated a plan for regulating the future conduct of his



life. This was in his twentieth year, and it is worthy of remark that he adhered to this plan through to old age.

Franklin sailed from England, July 23, 1726, and landed at Philadelphia, October 11th, the voyage consuming nearly eleven weeks.

At this time, there were but two printing establishments in Philadelphia—the Bradford Shop and the Keimer Shop. Franklin was employed in the latter, and being an expert printer, was made foreman at a larger salary than had theretofore been paid other printers. Soon there was dissatisfaction at the preference shown Franklin, and after a time he left Keimer and started a shop of his own on a small scale. He made it a point to do better work than his competitors, and soon he had much of the government printing to do. In time, he started a stationer's shop in connection with his printing, and by his industry and frugality, soon attracted the notice of the leading men of the city. He states in his autobiography that in order to secure credit and character as a tradesman, he took care not only to be in reality industrious and frugal, but to avoid appearance to the contrary. He dressed plainly, and was seen at no place of idle diversion, and to show that he was not above his business, he brought home the supplies which he purchased for his printing establishment on a wheelbarrow. He was thus esteemed an industrious, thriving young man, and the merchants solicited his custom because he paid promptly for everything that he bought.

Franklin was now about twenty-four years of age, and was well started in what proved to be a very successful and prosperous business. On September 21, 1730, he was married to Miss Deborah Reed, the young lady who was amused at his awkwardness on that Sunday morning when he entered Philadelphia, in 1723. She was a handsome woman, and, like her husband, was industrious and frugal. Later on in life, Franklin boasted that he had been clothed from head to foot in cloth of his wife's make. From this time on, we find Franklin forever at his business; for he had firmly resolved to make the most of his life. It was his nature to originate, to teach, to preach, to moralize, and, above all, to work. He was never idle. His accomplishments between the time of his marriage, in 1730, when he was twenty-four, and his first mission to England, (in 1757), when he was fifty, were marvellous. He organized the Junto, a literary society, which in

time included in its membership the leading men in Philadelphia. Morals, politics and natural philosophy were the subjects for reading and discussion. This society prospered and established branches throughout the colony. Franklin was the tap-root of the whole growth, and sent his ideas circulating throughout all the wide spreading branches. The members of this society, at the suggestion of Franklin, pooled their books and organized a circulating library, the first library formed in the colonies. Out of this organization grew what is now the Philadelphia Library, one of the most complete of its kind in this country. During these years, Franklin mastered the French, Italian and Spanish languages, and without studying in any college, he received the degree of Master of Arts, first from Yale and afterwards from Harvard. These were conferred in consideration of his improvements and discoveries in the electric branch of natural philosophy. And later on, he was given degrees by Oxford, Cambridge and St. Andrews.

He invented the open stove, which he called the Pennsylvania Fireplace, that was used the world over. He organized the Union Fire Company for extinguishing fires, the first to be organized in this country. He also established a system of street lighting by inventing a globe, in which a light would burn out-of-doors without smoking. He organized a system of improving streets, and paying the cost thereof by what is known as the front foot assessment. This method is now in vogue in most of the American cities. The academy, which he organized in 1743, is now the University of Pennsylvania. The Alumni of this University, in June, 1914, in honor of its founder, unveiled at the University the statute of Franklin, which represents him as he arrived in Philadelphia, at the age of seventeen. In 1751, he conceived the scheme of a public hospital, and by his personal solicitation, he created a fund, which, in connection with an appropriation from the Pennsylvania Assembly, was sufficient to establish the Philadelphia Hospital.

In 1736, he was chosen clerk of the General Assembly of Pennsylvania, and continued to be re-elected for fourteen consecutive years, when he was chosen a member of the assembly itself. The next year, in 1737, he was appointed Postmaster of Philadelphia, and later on, was made Postmaster for the colonies, which position he held until the beginning of the

Revolutionary War, and during which time he reformed the entire postal service of the country. It is claimed for him that he was the originator of our present postal system. Before Hamilton, Jay, Warren, John Paul Jones, Knox and Marshall were born, when Adams, Jefferson, Hancock, Patrick Henry and Richard Henry Lee were mere children, and Washington and Madison were unknown boys, and the colonies were a discordant congeries of separate and jealous governments, Franklin had suggested a concrete plan for an organic union at the Council of Albany, in 1754, and this was the true germ of the present constitution of the United States.

But in these years of activity in the public interest, he never for a moment neglected himself or his business. No man ever applied more rigid discipline to himself than did Franklin. He strove to lead a perfect life, so far as that was possible, and at the age of twenty-seven, he devised a plan of daily living with the idea of arriving at moral perfection. To this end, he prepared a little book, in which he allotted a page for each of the virtues, Temperance, Silence, Order, Resolution, Frugality, Industry, Sincerity, Justice, Moderation, Cleanliness, Tranquility, Chastity.

His purpose was to acquire the habit of all of these virtues by conforming to one of them at a time, and when master of that, to proceed to the other, and so on until he had gone through the entire list. And when the list had been gone through with, he would start at the beginning and live them over again, devoting at least a week to each virtue in the order in which they appeared in the list. He carried this little book with him, and every evening marked the faults of the day. If in the first week, he kept the line marked "Temperance" clear of marks, he felt that the habit of that virtue had been strengthened. He would then give his attention to the next virtue, and endeavor for the following week to keep both lines clear of mark. Proceeding thus to the last, he would go through a course complete in twelve weeks, or four courses a year. He pursued this practice for twenty-seven years. Twenty-seven years of consecration and discipline! Little wonder that later in life, when he appeared before the Bar of the House of Commons, and was subjected to a most grilling examination, he maintained his composure and kept his temper when everybody else lost theirs. In his autobiography, he states that to this little artifice, with the bless-

ing of God, he owed his long continued health, the easiness of his circumstances, the acquisition of his fortune, his usefulness as a citizen, the confidence of his countrymen, the evenness of his temper, his cheerfulness in conversation, and the constant felicity of his life.

After he was fully underway in the printing business, he established a newspaper, the *Pennsylvania Gazette*, which, as I understand, afterwards became the *Saturday Evening Post*, and which is still in existence with a very large circulation. Being Postmaster for the colonies made the paper quite prominent, as well as profitable. In the conduct of his newspaper, he carefully excluded all libeling and personal abuse, which of late years has become so disgraceful in this country. Having contracted with his subscribers to furnish them with useful and entertaining reading, he felt that it was not proper to fill his paper with private altercations, in which they had no concern.

In 1732, he commenced the publication of his almanac in connection with the publication of his newspaper. He continued the publication of this almanac for twenty-five years. It was commonly known as *Poor Richard's Almanac*. It not only proved to be very profitable from a financial standpoint, but was the means of spreading his popularity not only among the people of this country but of Europe. Even in the early days of the almanac, as many as ten thousand copies were sold annually. Later on, several editions were printed, the number greatly increasing. Its proverbial sentences, inculcating industry and frugality as the means of procuring wealth, and thereby securing virtue, were sown like seed all through the colonies. The almanac went year after year into the house of nearly every shopkeeper, planter and farmer in the American provinces. Its wit and humor, its practical tone, its shrewd maxims, its worldly honesty, its morality of common sense, its useful information, all helped to shape the habits of Americans, and to form and strengthen the national character. Its terse bits of wisdom and virtue are familiar in our mouths to-day, and still influence our actions and guide our ways of thinking, and establish our points of view with the constant control of acquired habits, which we little suspect. The world has not yet grown away from its precepts, and it is hoped that it never will. If we were accustomed still to read the literature of the almanac, as some of us remember to have

done in our early school days, we should be charmed with its humor.

Every little makes a mickle.

Drive thy business, or it will drive thee.

One to-day is worth two tomorrows.

Necessity never made a good bargain.

He that waits upon fortune is never sure of a dinner.

Search others for their virtues, thyself for thy vices.

Creditors have better memories than debtors.

To lengthen thy life, lessen thy meals.

He that cannot obey, cannot command.

A wise man will desire no more than what he can get justly,  
use soberly, distribute cheerfully, and leave contentedly.

Be always ashamed to catch thyself idle.

If you would keep your secret from an enemy, tell it not  
to a friend.

God gives all things to industry.

Silks and satins put out the kitchen fire.

Want of care does us more damage than want of knowledge.

He that by the plow would thrive, himself must either hold  
or drive.

If you know how to spend less than you get, you have the  
philosopher's stone.

Diligence is the mother of good luck.

Beware of little expenses; a small leak will sink a great  
ship.

He is not well bred who cannot bear ill breeding in others.

I never saw an oft-removed tree, nor yet an oft-removed  
family, that throve so well as those that settled be.

It is true that we are sorely taxed by our government, yet  
we are taxed twice as much by our idleness, thrice by our  
pride, and four-fold by our follies.

There was never a good war or a bad peace.

These are but a few of the many of his sayings. It is easy  
to understand why he was regarded at this time as the na-  
tion's school-master, and why he still ranks among the most  
distinguished moralists that have ever lived. These lessons of  
thrift and independence, which he inculcated in the lives of  
the colonists, prepared them for their later struggle with the  
mother country. While in these days of luxury and opu-  
lence, they may seem to some penny-wise, they were in those  
days of little wealth and small beginnings, essential to the

well-being of Americans. And they are just as essential to-day. Silks and satins put out the kitchen fire to-day the same as in Franklin's time; and want of care still does us more damage than want of knowledge. The advice which Franklin gave to a discontented people may, therefore, be read with profit even by this generation; for it is still true that while we are grievously taxed by our governments, national and local, we are still taxed twice as much by our idleness, thrice by our pride, and four-fold by our follies. Extravagance and waste are our economic sins, resulting in pauperism, that is quite general, and which is common to all classes. If the admonitions of Franklin had been heeded, the spectre of pauperism would not confront sixty-six out of every one hundred people in the United States as it does today. The President of the American Society for Thrift reports that sixty-six out of every one hundred people who die leave no estate whatever; that out of the remaining thirty-four, only nine leave estates larger than \$5,000, and that the average of the balance of twenty-five is a little less than \$1300; that at the age of sixty-five, ninety-seven out of every one hundred in America are partly or wholly dependent upon relatives, friends or the public for their daily bread, for their clothing and a roof under which to sleep. According to Government statistics, ninety-eight per cent of the American people are living from day to day on their wages, which means that a loss of employment would result in pauperism for all but two per cent.

Legislation is now proposed by some of our modern statesmen as the only sure and effective means of correcting these inequalities of life, which, in the main, are caused by laziness, extravagance and sin. This so-called social legislation for the accomplishment of social justice is but a form of state socialism, and rests on the assumption that the average individual is not competent to choose his own calling, to use his own time to good advantage, to spend his own money, or to provide for his own future and the various emergencies of life. Germany has experimented with this sort of legislation under the most favorable conditions, and thus far it has resulted in bringing the whole population to an enfeebled social and political condition, where they can do little for themselves.

Legislation has never yet assisted the individual one whit

in wisely choosing his course in life, in meeting the vicissitudes of life, or in forming habits of work, thrift and self-denial. These essentials of a comfortable, serviceable and successful life are the results of individual effort and sacrifice, rather than legislation, which seeks to compel the individual to action, and to support him if he loses out in the struggle of life. If the state is to take care of the individual when he is sick, or old, or out of work, it must necessarily deprive him of his liberty when he is well, and young and busy. There is one insurmountable obstacle which stands, and has always stood, in the way of equalizing the inequalities of life by legislation, and that is human nature. What conceivable legislative regulation can equalize the difference between what Smith, Brown and Jones will get out of \$5 when earned or given to them! Smith will use his \$5 to make him that much richer; Brown will spend his in dissipation; and Jones will lose his on taking a chance on some speculation. How is such a situation to be corrected by law? And until it is corrected, we will have rich men and poor men all over again. No government can go much further than Germany has gone along the lines of state interference, guidance and control of the personal affairs of its people. And the great Bismarck, who advocated the industrial insurance, and other similar laws, admitted that the purpose was selfish, and that they had not resulted in allaying the discontent of the people. It is obvious that it is better for the individual to be told that he must shift for himself, than that he shall be taken care of by the state. "Thou shalt earn thy bread by the sweat of thy brow", after all embodies the true philosophy of life. And after trying out the various legislative nostrums for bettering the condition of the individual, making life easier for him, and supplementing his failures and shortcomings by state aid, it will be found that moderation, temperance, frugality and virtue, and a frequent recurrence to fundamental principles, enjoined upon us by the declaration of rights of our constitution and the observance of the teachings of the great Franklin will, in the end, be more potent in correcting the inequalities of life, in bringing comfort and independence to the individual, and instilling in him a loyalty to the government which protects him, than any coddling legislation can possibly be. Herbert Spencer spoke a great truth when he said: "The ultimate result of shielding men from

their own folly is to fill the world with a race of incompetents."

Franklin kept a daily journal in which he recorded his observations and experiences, and many of his maxims, among which is the following:

"I will speak ill of no man, not even in matter of truth; but rather excuse the faults I hear charged upon others, and upon proper occasion, speak all the good I know of everybody."

This precept, which is perhaps more honored in the breach than in the observance, truly reflects the temper and character of Franklin's everyday life, and contains a lesson which may be profitably studied in these days when careless speaking has come to be our besetting sin.

In 1757, Franklin brought out a new edition of Poor Richard's sayings. This publication was given wide circulation throughout this country and Europe, and was printed in the English, French, Spanish and Italian languages. He thus became the world's schoolmaster.

But a larger service to the colonies, and graver responsibilities, now awaited Franklin, and from this time, 1757 on, the greater part of his life was spent abroad, first in England, representing the colonies in their controversies over taxation with their mother country, and then in France during the long struggle which followed with England, culminating in our independence, begging and imploring the French Government for moral and financial assistance. Every reader of history knows what tasks confronted him before the English government, and at the French Court, and how well he met them.

England was determined not only to tax the colonies without being represented in Parliament, but to control their markets, insisting that they should not compete with England in the manufacture of certain articles, but should purchase them in England, and that there should be no trading between the colonies in commodities that could be supplied from England. Franklin, as their champion, stood at the Bar of the House of Commons, protesting against this treatment by the mother country. He stated the case as follows:



"That it is supposed an undoubted right of Englishmen not to be taxed but by their own consent, given through their representatives.

"That the colonists have no representative in Parliament.

"That compelling the colonists to pay money without their consent would be rather like raising contributions in an enemy's country, than taxing of Englishmen for their own public benefit.

"That it would be treating them as a conquered people, and not as true British subjects.

"That if we plant and reap, and must not ship, then Parliament should furnish transports to bring us all back again."

This protest, as you all know, was futile, and the controversy was brought to a close only by the arbitrament of war.

Before Franklin left England to return to Philadelphia, the feeling had become very bitter. Mr. Thomas Walpole, a member of the House of Commons, a loyal Englishman, but fortunately a true friend of Franklin, realizing the feeling which had been aroused against Franklin, advised him that his longer stay would tend to exasperate the nation, and might be attended with dangerous consequences to his person, and being too polite to tell Franklin to leave the country, wished him a prosperous voyage and long health. Franklin thereupon sailed for America, but a fortnight before he landed in Philadelphia, the battles of Lexington and Concord had been fought.

Soon after his return from England, the colonies found that it was necessary to have a representative in France during the war with England, and in September, 1776, two months after he had signed the Declaration of Independence, he was sent as an envoy to France, where he remained until July, 1785. At the French Court, he assumed to represent a nation, but the embarrassing question arose, Was it a nation, or a parcel of rebels. Here was an unusual and vexatious problem, concerning which most of the cautious royal governments were in no hurry to commit themselves; and their reticence added greatly to the perplexities of Franklin and the emissaries to the other nations. While it was in the interest of France to assist the colonies, and deprive England of her dependencies, she naturally hesitated to place herself

in a position where the other nations could charge her of being an aider and an abettor of a rebellion on the part of subjects whose grievances were an antipathy to taxation. It required the skill, tact and diplomacy of a great man (and Franklin proved to be such), to persuade the French Government that the cause of the colonies was a just one, and that the time had come when it was their right to be treated as a nation. How well Franklin succeeded in his efforts in obtaining the moral and financial support, not only of the French Government, but of the French people as a whole, is known to all, for it is a matter of history. The colonies were poor and without the financial means to carry on the war with England; and had it not been for the relations which Franklin established with DeVergennes, the French Minister for foreign affairs, it is entirely probable that the American Revolution would have been a complete failure. It is not giving undue credit to Franklin to say that he did more to bring about a successful termination of this revolution than any other American, not excepting Washington. Without the financial assistance which he alone was able to get from France, the war on the part of the colonies would not have been successful. It was Franklin who persuaded La Fayette to come to the assistance of Washington, and knowing that the American army was a disorganized and undisciplined body of troops, it was he who persuaded Baron Von Stueben to go to America and organize and drill the army, and make it efficient for action. And it was Franklin who found the money that enabled John Paul Jones to equip his famous ship *Bon Homme Richard*, named after Poor Richard, by which he kept the whole British shores in a state of feverish alarm, and challenged the leading English warship, the *Scarpis*, to battle and finally captured it.

At the close of the war, in 1782, on account of his advancing years, Franklin sent to Congress his resignation, but there were treaties to be made, and at the urgent solicitation of Congress, he withdrew his resignation and entered upon the work of concluding a treaty of peace with England, by which the United States was recognized as an independent nation. Besides this treaty, he concluded commercial treaties with France, Russia, Sweden, Denmark and Portugal. It is worthy of note that Franklin's name appears on the Declaration of Independence, the Treaty with England, and the

Constitution of the United States. He was past three score and ten when he signed the Declaration of Independence, and three score and twenty when he signed the Constitution of the United States.

In framing the treaty of peace with Great Britain, Franklin advocated that the misery of war should be henceforth limited to the actual belligerents, and proposed to accomplish this result by an article in the treaty to the following effect:

“If war should hereafter arise between Great Britain and the United States, which God forbid, the merchants of either country then residing in the other shall be allowed to remain nine months to collect their debts and settle their affairs, and may depart freely, carrying off all their effects without molestation or hindrance. And all fishermen, all cultivators of the earth, and all artisans or manufacturers unarmed, and inhabiting unfortified towns, villages, or places, who labor for the common subsistence and benefit of mankind, and peaceably follow their respective employments, shall be allowed to continue the same, and shall not be molested by the armed force of the enemy in whose power by the events of the war they may happen to fall; but, if anything is necessary to be taken from them, for use of such armed force, the same shall be paid for at a reasonable price. And all merchants or traders with their unarmed vessels, employed in commerce, exchanging the products of different places, and thereby rendering the necessaries, conveniences and comforts of human life more easy to obtain and more general, shall be allowed to pass freely, unmolested. And neither of the powers, parties to this treaty, shall grant or issue any commission to any private armed vessels, empowering them to take or destroy such trading ships, or interrupt such commerce.”

This proposal was far in advance of public opinion, and the envoys of the British Government would not consent to it.

Franklin maintained “*all wars are follies, very expensive and very mischievous ones*”, and asked: “*When will mankind be convinced of this, and agree to settle their differences by arbitration?*”

When he left France for America, in the summer of 1785,

he naturally concluded that his life's work had been finished, but he no sooner set foot in "dear Philadelphia," as he loved to speak of that city, than he was called upon to assist in the work of forming a constitution for the nation which had just been born across the sea.

The convention met in the same hall in Philadelphia in which Franklin had, eleven years previous, signed the Declaration of Independence. It was a body of great men. Most of them had probably given more study to the different governments of the world, and had better defined views on the subject of government, than have the statesmen of our day. It was not a harmonious body by any means. There was not only divergent views as to the kind of government that should then be put forth, but there were jealousies of long standing between the larger and smaller states, that were difficult to appease. It was the combined tact and diplomacy of Franklin, Washington and Madison that brought the delegates of those discordant states together, and enabled them to reach an agreement by which the states, both large and small, should have equal representation in the Senate and representation in the House of Representatives on the basis of population. When things were looking darkest, Franklin came to the rescue with one of his homely adages that when a joiner wishes to fit two boards, he pares off a bit from both. This practical suggestion of compromise did much to put the warring delegates in better humor for adjusting many of the differences which afterwards arose.

Aside from the jealousies between the larger and smaller states, there were delegates in the convention who were clamorous for a pure democracy, and who were utterly opposed to a representative form of government. It was the persistency and obstinacy of these delegates that came nigh wrecking the convention and making our present form of government impossible. During this crisis, the influence of Franklin's lofty patriotism and conservative statesmanship, was reflected in Washington, for it was Washington who turned the tide of sentiment and saved the day. The argument was then, as now, for a government that would please for the time being the rank and file of the people, regardless of durability or its adaptation to the real needs of the nation. It was at this juncture, when the convention was wavering between the two forms of government—pure democracy and

representative government—that Washington suddenly interposed with a brief but immortal speech, which ought to be blazoned in letters of gold on every public building in the country. Arising from his chair, in tones solemn with suppressed emotion, he said:

“It is too probable that no plan we propose will be adopted. Perhaps another dreadful conflict is to be sustained. If, to please the people, we offer what we ourselves disapprove, how can we afterward defend our work! Let us raise a standard to which the wise and the honest can repair; the event is in the hands of God.”

The utterances of this great sentiment carried conviction to everyone, braced the convention to high resolves, and impressed upon all the delegates that they were in a situation where faltering or trifling was both wicked and dangerous. From that moment, the convention caught something of the glorious spirit of Washington and Franklin, and the pure democracy form of government with all its fallacies and temporary expedients was abandoned. The impress left by such patriots as Washington, Franklin, Madison, Hamilton and Marshall has lasted from generation to generation; it still controls the conscience of our people, and was potent in thwarting the recent attempt to foist upon the American people a form of government that was repudiated by our fathers more than a century ago. It was not until our day that any considerable body of men made light of our constitution, or claimed the right to completely change our form of government. The fallacy is now preached by some that this government of ours is owned by the voters of our day, and that it is their right to do with it whatever the majority vote to do with it. There is no such right, constitutional or moral. The institutions which make our form and frame of government are not *owned*, but are held in trust. This government of ours, under which the greatest progress in civilization in all times has been made, and which has been a secure protection to its people everywhere, was bequeathed to us impressed with a great trust, and that trust is to preserve the form of government established by its founders, and transmit it intact to the succeeding generation. Our forefathers did what they did for a permanent cause, to establish something and to perpetuate something, and that something was and is this

representative republic; and it is as much our duty to preserve and maintain it in its integrity as Washington, Franklin, Madison, and a score of others, felt it their duty to establish it.

"We have outgrown the constitution of our fathers." This is not an uncommon remark in these days of unrest and innovation, and is in line with the utterances which are not infrequently made, that we have outlived the Christian religion, and that the Ten Commandments are obsolete and not longer adapted to the everyday life of the human race. But the injunctions of the commandments and the teachings of the Christian religion are just as apt and potent to-day as ever, and will continue to guide and rule the conscience of the world in the arbitrament that is ever pending between right and wrong. And because the underlying principle of our form of government is that it is a government of law, and not of men, and that we have a voice in making the law which binds him who governs, the same as those governed, the constitution has not been outgrown, and will not be until we have reached the point where we are content to have our rights and duties measured by the whim and caprice of an usurper. Our constitution is not a scrap of paper.

The question which confronts us to-day, involving a change in the form of our government, were met by the men from whom we inherit this republic, by Washington, Franklin, Hamilton, Adams, Marshall, and a score of others, and settled as we have received the settlement. These men were giants, and they had giants to fight in those days. They had a storm of unlimited democracy to avert, and they averted it. They had a popular philosophy, and an alluring theory to overcome, and they overcame them. And let us hope that we of this generation will be inspired with something of the glorious spirit which inspired the founders of this great, growing, historical institution, beloved for what it has been and will be to us, and should be to all succeeding generations.

The close of the convention ended the public career of Franklin, although he lent his great influence to secure the adoption of the constitution and the election of Washington as the first President. His remaining years, from 1788, to his death, in 1790, were years of physical suffering, and were largely passed in bed. The intervals when he was able to be about, he devoted to the preparation of articles condemning

slavery and the liberty and license of the press. On April 17, 1790, in his eighty-fifth year, he died. He was as old as the century, and had touched it at every point. His body still lies where it was buried in the Friends burying ground in Philadelphia, a simple slab of marble level with the ground marking the spot.

In reviewing the life of this remarkable man, it is not difficult to find the springs of success, for they were the common virtues of the common, everyday, useful, successful life. These virtues were worth while then, and they are worth while now. The fruits of Temperance, Frugality, Industry, Sincerity, Moderation, Justice and Humility, are the same now as in Franklin's time, and the observance of these virtues will develop a race of strong men now, as they did then. Whenever we note the results of a great life, we see that they were attained by ceaseless efforts, strenuous living, and endless self culture. Perfection is the result of work only, and that is the reason that genius is the infinite capacity for hard work, and work was the presiding genius of Franklin's life. When an apprentice to his brother learning the printer's trade, he spent the noon hour studying, eating his luncheon at the same time, while others were idle, or amusing themselves with games. This habit of work formed early in life, clung to him to the end. It was work, persistent, intelligent work, that was the key-note of this great man's great life. Franklin thought more, said more, wrote more, and did more that is of enduring value, than any man yet born under American skies, and yet he was without a college education. In fact, he never had but eight months schooling, but he had acquired out of the experiences and vicissitudes of his life, a well trained, disciplined mind, and a sturdiness of character which schools and universities cannot give. America has had free education from the beginning, and yet the men who have made America are without university degrees with such few exceptions that the academically educated are lost in the overwhelming majority who have trained themselves. The fact is that most of the academically educated are working for those who never had any schooling beyond that afforded by the country district school. Much of the confusion in this matter arises from the fact that *training* and *education* are confounded. Most of the young men who graduate from our schools and universities get scarcely any training, and when

confronted with the real problems of life, shrink from them, fail and are forgotten. This is largely so because the way has been made too easy. I concede that the state ought to supply the opportunity for elementary study, but only those who earn their way ought to have the path beyond made easy. Young men who have a hunger for an education, and for the training and discipline that come only out of struggle and sacrifice, will blaze their own paths through the forest of difficulties. The others should not be supported and pampered into intellectual incapacity.

It is true that in his days of boyish wisdom, Franklin questioned the authenticity of the bible, and the efficacy of the Christian religion. But as he advanced in years, and was called upon to meet great emergencies, and to solve great problems of government, he fully realized that God governs in the affairs of men. When the convention had been in session for some weeks, making very little progress on account of the unfortunate difference of opinion among the delegates, it was Franklin who introduced a resolution for daily prayers, and the remarks which he made in support of that resolution are sufficient proof of his full acceptance of the fundamentals of the Christian religion; for Christianity is not a system of theology, but a way of life in which the validity of our relation to God is tested by our everyday relations to our neighbors. Franklin's Christianity was of the vital and practical sort for he believed that the Christian religion had always suffered when form and creeds were more regarded than character and service, and that at the last day we shall not be examined as to what we *thought*, but what we *did*. You will recall the plan which he formulated in early life of attaining moral perfection; how he tabulated twelve virtues, Temperance, Silence, Order, Resolution, Frugality, Industry, Sincerity, Justice, Moderation, Cleanliness, Tranquility and Chastity. In the last years of his life, he added Humility to this list of virtues, and made the test of compliance, daily living in conformity with the life of Christ. "He came not to be ministered unto, but to minister." This statement of one of His Apostles, better interprets the reach and purpose of Christ's life than any other passage in the New Testament. After all, the vital and enduring fact in Christ's life is that He helped men. And when we review our own lives, we find that the lasting satisfaction we get out of life is what we do



for other people. Religious creeds, dogmas and ceremonies dwindle into nothingness in comparison; and when this test is applied, Franklin was supremely a Christian. His life was not only consecrated to the service of mankind, but was a life of self-effacement, the like of which is rarely seen.

Strike at the root of penury in my heart.

Give me the strength lightly to bear my joys and sorrows.

Give me the strength to make my love fruitful in service.

Give me the strength never to disown the poor, or bend my knees before insolent might.

Give me the strength to raise my mind high above daily trifles.

And give me the strength to surrender my strength to Thy will with love.

This prayer of the great Bengal poet was beautifully lived and richly fulfilled in Franklin's everyday life. Penury in all its phases he expunged from his life. He never disowned the poor, or forfeited the majesty of his own soul, or the independence of his own thoughts. He rendered service to mankind everywhere in unstinted measure. He little concerned himself with the daily trifles of life, and his sorrows he bore lightly, accepting them as his portion of the everyday life whose burdens we bear, and whose vicissitudes are to us such a mystery.

In his early life, Franklin *found* wisdom and *got* understanding, and his entire life was a complete exemplification of the fruits of wisdom, so beautifully portrayed by Solomon:

Happy is the man that findeth wisdom,

And the man that getteth understanding,

For the merchandise of it is better than silver,

And the gain thereof than fine gold.

She is more precious than rubies,

And all thou canst desire is not to be compared unto her.

Length of days is in her right hand,

And in her left hand riches and honor.

Her ways are ways of pleasantness, and all her paths are peace.

But a few weeks before his death, in reply to a letter from Doctor Stiles, President of Yale College, questioning him about his religious faith, Franklin unreservedly accepted the great truths of the Christian religion, and acknowledged the

immanence of God, His power, His wisdom, His goodness, and the wideness of His mercy.

I fully appreciate that there are some detractors of Franklin, who refuse to recognize the inspiring volume of his life because it contains some *errata*, of which we chiefly know through his own open and penitent avowal. He freely confessed his mistakes, as well as his sins, for he firmly believed that the confessional was the crying need of every human soul. Notwithstanding the indiscretion of his early life, which were forgotten and forgiven in his own day, all must recognize his consistent and lifelong struggle for a useful and noble life. He had the esteem and veneration of his compatriots; and we of this generation may well rest content with that. When the great philosopher was lying on his death bed, Washington thus wrote to him:

“If to be venerated for benevolence, if to be admired for talents, if to be esteemed for patriotism, if to be beloved for philanthropy, can gratify the human mind, you must have the present consolation to know that you have not lived in vain; and I flatter myself that it will not be ranked among the least grateful occurrences of your life, to be assured that so long as I retain my memory, you will be recollected with respect, veneration and affection.”

A philosophy that produces a life like this is worth while. When we think of Franklin, with his burden of nearly a hundred years, devoting himself unreservedly to the betterment of human kind everywhere, of the vast span of his activities, of the kindness of his bearing, of the splendor of his munificence, and of his indomitable loyalty to the essentials of right living and good government, we feel that though the fashion of his life is old, it can never become outworn.

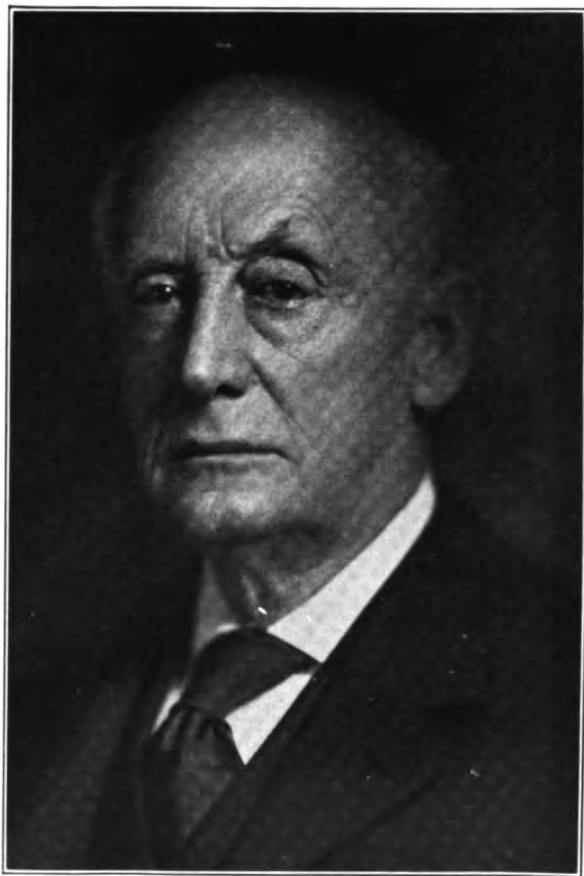
Washington, Jefferson, Adams, Hamilton, Madison and Marshall were all great men—a mighty host—but “tried by the arduous greatness of things done,” no greater man, or nobler figure, ever stood in the fore-front of a nation’s life than Benjamin Franklin.

## THE NEGRO QUESTION.

BY MOORFIELD STOREY.  
DELIVERED JUNE 27, 1918.

There are in this country today from ten to twelve millions of native Americans entitled under the Constitution and laws of the United States to every right that any American citizen enjoys and protected against hostile legislation in any state by the Fourteenth Amendment. Yet all over the country their rights are ignored and they are subjected to indignities of every kind, simply because they are negroes. The Constitution expressly provides that the right of citizens to vote "shall not be denied or abridged \* \* \* on account of race, color or previous condition of servitude." Yet in many states this provision is set at naught. The negroes have felt the murderous violence of the Ku Klux Klan, they have seen brutality followed by fraud when elections were carried by tissue paper ballots, and the same results accomplished later by "grandfather clauses" and laws intended to enable election officers to reject their votes. We need not enumerate the methods for we all know that in the Southern States the negro vote has been and is suppressed. This is admitted and justified by the Southern people.

Negroes are denied the protection which the law affords the lives and property of other citizens. If only charged with crime or even misdemeanor, they are at the mercy of the mob and may be killed and tortured with absolute impunity. In many states they cannot obtain justice in the courts. At hotels, restaurants and theatres they are not admitted or are given poor accommodation. In the public parks and public conveyances, even in the public offices of the nation they are set apart from their fellow-citizens. The districts which they occupy in cities are neglected by the authorities, and of the money which the community devotes to education, a very small fraction is allotted to them, so that their schoolhouses and their teachers are grossly inadequate. It is notorious that in many cities they are wretchedly housed and charged unreasonable rents for their abodes. Labor unions will not receive them as members, and as non-union men they find it



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hard to get employment. If in spite of every obstacle they gain an education they find door after door closed to them which would have opened to receive them gladly had their skins been white. The deliberate effort is made to stamp them as inferior, to keep them "hewers of wood and drawers of water," to deny them that opportunity to rise which America offers to every other citizen or emigrant no matter how ignorant or how degraded. These are the unquestionable facts, and they are not controverted.

Let me give you some testimony from the South. Says the Atlanta Constitution:

"We must be fair to the Negro. There is no use in beating about the bush. We have not shown this fairness in the past, nor are we showing it today, either in justice before the laws, in facilities afforded for education, or in other directions."

Some years ago a Mississippi lawyer addressing the Bar Association of that State said:

"A negro accused of a crime during the days of slavery was dealt with more justly than he is today \* \* \* It is next to an impossibility to convict even upon the strongest evidence any white man of a crime of violence upon the person of a negro \* \* \* and the converse is equally true that it is next to an impossibility to acquit a negro of any crime of violence where a white man is concerned" and well did he add "We cannot either as individuals, as a country, as a state, or as a nation continue to mete out one kind of criminal justice to a poor man, a friendless man, or a man of a different race, and another kind of justice to a rich man, an influential man, or a man of our own race without reaping the consequences."

From the Vicksburg Herald come these words:

"The *Herald* looks with no favor upon drafting Southern Negroes at all, believing they should be exempt *in toto* because they do not equally 'share in the benefits of government.' To say that they do is to take issue with the palpable truth. 'Taxation without representation' the war cry of the Revolutionary wrong against Great

Britain was not half so plain a wrong as requiring military service from a class that is denied suffrage and which lives under such discriminations of inferiority as the 'Jim Crow' law and inferior school equipment and service."

One might criticize such an utterance as intended to encourage resistance to conscription by the negroes, or might imagine that the writer from these premises would argue against the "wrong" which he recognizes. Alas, No. His argument is that the wrong must be made permanent and the conscription of negroes abandoned because it makes the wrong too apparent. He says "Drafting negroes as soldiers is a gross travesty and contradiction of the color line creed," and rather than abandon that creed he would deprive his country in this terrible crisis of all the soldiers which twelve millions of people are ready and anxious to supply.

If we ask what is done for education, the report of a careful investigation published by the Bureau of Education in the Department of the Interior is melancholy reading. It gives the facts as to the 16 Southern States, the District of Columbia and Missouri in which the population contains a considerable portion of negroes, and states that in 15 states and the District of Columbia "for which statistics by race could be obtained" the figures showed an expenditure of "\$10.32 for each white child and \$2.89 for each colored child." The conditions are even worse than these figures indicate for as the report states "the per capita expenditure for Negro children is higher in the border states where the proportion of colored people is relatively small and the proportion for colored high schools is better." The more numerous the Negroes the smaller is the provision for their education. A table in the report shows that in the counties where the percentage of Negroes in the population is less than 10 per cent, the *per capita* expenditure for white and colored is nearly equal. It evidently does not pay to maintain separate schools. Where however the percentage of negroes is between 50 and 75 per cent, the expenditure for the white is \$12.53 per capita and for the colored \$1.77, while where the percentage exceeds 75 per cent the expenditure for the whites is \$22.22 and for the Negroes only \$1.78 per capita.

The results may be imagined and we cannot be surprised

at the testimony which the same report gives from competent witnesses. I quote:

"The supervisor of white elementary rural schools in one of the States recently wrote concerning the Negro schools:

'I never visit one of these [Negro] schools without feeling that we are wasting a large part of this money and are neglecting a great opportunity. The Negro schoolhouses are miserable beyond all description. They are usually without comfort, equipment, proper lighting, or sanitation. Nearly all of the Negroes of school age in the district are crowded into these miserable structures during the short term which the school runs. Most of the teachers are absolutely untrained and have been given certificates by the county board, not because they have passed the examination, but because it is necessary to have some kind of a Negro teacher. Among the Negro rural schools which I have visited, I have found only one in which the highest class knew the multiplication table.'

A State superintendent writes:

'There has never been any serious attempt in this State to offer adequate educational facilities for the colored race. The average length of the term for the State is only four months; practically all of the schools are taught in dilapidated churches, which, of course, are not equipped with suitable desks, blackboards, and the other essentials of a school; practically all of the teachers are incompetent, possessing little or no education and having had no professional training whatever, except a few weeks obtained in the summer schools; the schools are generally overcrowded, some of them having as many as 100 students to the teacher; no attempt is made to do more than teach the children to read, write, and figure, and these subjects are learned very imperfectly.'"

But more dangerous and more wicked than neglect is the barbarous cruelty of lynching. I need not revive the figures of the past. What has happened within a year is enough. Since the United States entered the war a careful investiga-



tion shows that 219 Negro men, women and children have been killed and lynched by mobs in addition to two white men, one of these being Robert Prager. Four Negroes were lynched in Alabama, 2 in Arkansas, 1 in Florida, 7 in Georgia, 1 in Kentucky, 11 in Louisiana, 3 in Mississippi, 1 in North Carolina, 2 in Oklahoma, 2 in South Carolina, 5 in Tennessee, 9 in Texas, 2 in Virginia, 1 in West Virginia, and 1 in Wyoming. In addition to these cases 175 men, women and children were tortured, burned and killed at East St. Louis in July, 1917, and three Negroes were killed by a mob at Chester, Pa., in September, 1917. Since 1885 between 3,000 and 4,000 cases of lynching have been reported, and in only three instances does investigation show that any lyncher was punished. In two of these cases the victim of the mob was white. In the third case, that of a particularly atrocious murder of a Tennessee farmer and his two daughters, the lynchers were two young and friendless white boys.

That you may realize what lynching is, let me give you instances. Dyersburg in Tennessee is a prosperous town of some 7,500 people, the county seat and a representative community of the better class. In this town on Sunday morning, December 2, in a lot the corner of which adjoins the public square, and which is within a stone's throw of two churches and the residences of several ministers, as well as of the mayor of the town, while the people of Dyersburg surrounded the scene, watched all that occurred and approved since no protest was made, a negro was thus dealt with.

"The Negro was seated on the ground and a buggy-axle driven into the ground between his legs. His feet were chained together, with logging chains, and he was tied with wire. A fire was built. Pokers and flat-irons were procured and heated in the fire. It was thirty minutes before they were red-hot.

"His self-appointed executors burned his eye-balls with red-hot irons. When he opened his mouth to cry for mercy a red-hot poker was rammed down his gullet. Red hot irons were placed on his feet, back, and body, until a hideous stench of burning human flesh filled the Sabbath air of Dyersburg.

"Thousands of people witnessed this scene. They had to be pushed back from the stake to which the Negro was chained. Roof-tops, second-story windows, and

porch-tops were filled with spectators. Children were lifted to shoulders, that they might behold the agony of the victim.

"A little distance away, in the public square, the best citizens of the county supported the burning and torturing with their near-by presence."

The Memphis News-Scimitar thus describes the scene:

"Not a domino hid a face. Everyone was unmasked. Leaders were designated and assigned their parts. Long before the mob reached the city the public square was choked with humanity. All waited patiently. Women, with babies, made themselves comfortable.

At last the irons were hot.

A red streak shot out; a poker in a brawny hand was boring out one of the Negro's eyes. The Negro bore the ordeal with courage, only low moans escaping him. Another poker was working like an auger on the other orbit.

Swish. Once, twice, three times a red-hot iron dug gaping places in Lation Scott's back and sides.

'Fetch a hotter one.' somebody said. The execution went on.

Now someone had another poker—jabbing its fiery joint into the ribs of the doomed black.

Then rubbish was piled high about the agonized body, squirming beneath its load.

More and more wood and rubbish were fed the fire, but at three o'clock Lation Scott was not dead. Life finally fled at four o'clock.

Women scarcely changed countenance as the Negro's back was ironed with the hot brands. Even the executioner maintained their poise in the face of bloody creases left by the irons,—irons which some housewife has been using.

Three and a half hours were required to complete the execution."

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NOTE 1: One cannot help wondering whether on that Sunday in Dyersburg, in the shadow of those two churches, there came to the mind of any one of those respectable church-going citizens the immortal words, "Inasmuch as ye have done it unto the least of these, my brethren, ye have done it unto me."

At Estill Springs in Tennessee a Negro charged with killing two white men was in like manner tortured and burned alive. The Chattanooga Times thus describes what occurred:

"Jim McIlherron, the Negro who shot and killed Pierce Rodgers and Jesse Tigert, two white men at Estill Springs, last Friday, and wounded Frank Tigert, was tortured with a red-hot crowbar and then burned to death here tonight at 7:40 by twelve masked men. A crowd of approximately 2,000 persons, among whom were women and children, witnessed the burning.

McIlherron, who was badly wounded and unable to walk, was carried to the scene of the murder, where preparation for a funeral pyre was begun.

The captors proceeded to a spot about a quarter of a mile from the railroad station and prepared the death fire. The crowd followed and remained throughout the horrible proceedings. The Negro was led to a hickory tree, to which they chained him. After securing him to the tree a fire was laid. A short distance away another fire was kindled, and into it was put an iron bar to heat.

When the bar became red hot a member of the mob jabbed it toward the Negro's body. Crazy with fright, the black grabbed hold of it, and as it was pulled through his hands the atmosphere was filled with the odor of burning flesh. This was the first time the murderer gave evidence of his will being broken. Scream after scream rent the air. As the hot iron was applied to various parts of his body his yells and cries for mercy could be heard in the town.

After torturing the Negro several minutes one of the masked men poured coal oil on his feet and trousers and applied a match to the pyre. As the flames rose, enveloping the black's body, he begged that he be shot. Yells of derision greeted his request. The angry flames consumed his clothing and little blue blazes shot upward from his burning hair before he lost consciousness."

The example to these lynchers was set in Memphis and I quote the following statement from Rt. Rev. Thomas F. Gailor, Episcopal Bishop of Tennessee, a Southern white man, who wrote in the Nashville Banner:

"I realize that it is futile to attempt by any written word to stem the tide of what seems to be the popular will; but a man can, at least, declare his abhorrence of such atrocities.

This kind of lynching seems to be becoming epidemic in our state. About two years ago a Negro from Fayette County was lynched most barbarously near Memphis, and parts of his body, according to the newspapers, carried away as souvenirs. Many citizens of Memphis protested, but they were ignored. Last winter a Negro man near Memphis was burned at the stake, gasoline was poured over his body, and his head was cut off and taken through the city streets as a trophy. Last fall a Negro was burned to death in Dyersburg, and thousands of white people stood by and gloated over his agonies. And now, at Estill Springs, we have another burning, where the white men in charge first tortured the miserable creature with a red-hot iron, "to break his will," while the victim, already shot nearly to death, with one eye hanging out, screamed for mercy, and a thousand white men, with hundreds of women and children, looked on and were not ashamed."

The massacre of St. Louis is fresh in your memories, and its horrors are well known at the South as appears by the article in the Greenville News published at Greenville, South Carolina, of all days on July 4th, 1917, under the title "The Banner Lynching."

"Twenty negroes have been killed, three hundred are injured, and more than one hundred and fifty of their homes have been burned. This was the work of a mob that showed no negro mercy, that did not stop to discriminate between the good and the bad. All that could be caught were beaten, if not slain, and battered into pulp. White women caught negro women and tore their

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NOTE 2: You tell me that these details are revolting. You wonder why I spread them before you. They are revolting, but they are facts, and we Americans must face the facts, because unless you appreciate the real horror of the disease which is spreading over this country you will not nerve yourselves and rouse yourselves to apply the remedy. This is the truth that I am telling you, and I am telling it to you as it is reported by southern eye-witnesses.

clothes off, beat them and ran them away. As the negroes ran out of their burning houses, fired by the mob, they were shot down like dogs. One thousand five hundred soldiers do not suffice to control the situation. Hundreds of negroes, many of them carrying babies, are fleeing from their former home. Five hundred of the mob are in jail.

"The Memphis burning of a negro at the stake, the Abbeville lynching of Crawford, seem insignificant when compared with the East St. Louis shambles, when the streets ran red with negro blood, when negro women, innocent and unoffending, were brutally beaten, when negro men were shot down for competing with white labor."

Pages could be filled with the agonizing details of these and similar atrocities. The Governors of Tennessee, Mississippi and Louisiana have been appealed to, but have refused to act pleading a lack of power. In striking contrast has been the action taken by the Governors of Kentucky and both Carolinas, but in spite of their efforts the men who commit these crimes go free like the men who confessed that they murdered Prager. Coatesville in Pennsylvania, Springfield in Illinois, the home of Abraham Lincoln, have witnessed scenes scarcely less atrocious, and though the men who committed these hideous crimes were well known and were in some cases indicted, not one was ever punished. The juries refused to convict.

It is conceivable that in a country as large as ours ruffians might be found so degraded and ferocious as to commit these horrible crimes, but that no attempt should be made to punish them, that respectable men and women should look on and let their children witness such horrors would be inconceivable were it not clearly true. The great body of the community approves or lynching would stop. Men justify their treatment of the negroes by saying that it is necessary "to preserve their civilization" while the Editor of the Little Rock Daily News recently wrote that he considered white men "just a little lower than the angels" and the Negro "just a little higher than the brutes." What sort of "civilization" do such actions reveal, and who are the angels whom these white men so closely resemble?

The excuse that such things are done to prevent crimes against women is without foundation. Let me answer it by Southern testimony. Dr. W. C. Scroggs of the Louisiana State University says "Not only is lynching no preventive of crimes against women, but statistics prove that only one time in four are such crimes the cause of lynching. In 1915 only sixteen per cent of the persons lynched were *charged* with crimes against womanhood." I have emphasized the word "*charged*" for a charge is easily made and often falsely, as figures abundantly prove. In court the man who is charged is presumed to be innocent. To the mob the charge alone is proof of guilt. The figures for 1917 abundantly confirm Dr. Scroggs:

"Rape and attempted rape.....	11
Murder . . . . .	5
Assault and wounding . . . . .	4
Robbery and theft . . . . .	6
White women (intimacy, annoying, striking, entering room), etc.....	7
Race prejudice (refusing to give up farm) accidental killing . . . . .	2
Opposing draft . . . . .	1
Resisting arrest . . . . .	1
Unreported . . . . .	4
Vagrancy, disputing . . . . .	3
Killed by mobs.....	178
Total.....	222"

No saner words on the subject have been uttered than these which I quote from Henry Watterson:

"Lynching should not be misconstrued. It is not an effort to punish crime. It is a sport which has as its excuse the fact that a crime, of greater or less gravity, has been committed, or is alleged. A lynching party rarely is made up of citizens indignant at the law's delays or failures. It often is made up of a mob bent upon diversion, and proceeding in a mood of rather frolicsome ferocity, to have a thoroughly good time. Lynchers are not persons who strive from day to day toward social betterment. Neither are they always drunken ruffians. Oftentimes they are ruffians wholly

sober in so far as alcoholic indulgence is concerned, but highly stimulated by an opportunity to indulge in spectacular murder when there is no fear that the next grand jury will return murder indictments against them."

This is the situation which confronts this country. We call it "The Negro Problem," but it is not. The Negroes did not come to this country as voluntary emigrants. We white men took them from their homes and brought them here to be our slaves. We held them in slavery for more than two centuries. We called them "chattels," we refused them all the rights of men and did our best to make them brutes. We were afraid to let them learn and we kept them ignorant. Their patience, their kindness, their gentleness made all this possible. Had they been less patient, slavery would have perished at the outset.

During the civil war, waged at least after 1863 to free them, they showed a loyalty to their masters which is without a parallel in history. They tilled the soil and raised the crops which fed the Southern soldiers, who were fighting to keep them slaves. To their protection these soldiers confided their wives and children, and as a leading Southern gentleman said to me "There was not a single case in which this trust was betrayed," adding with tears in his voice "There never was a better race than the negroes." This shows how far they were from brutes. There were in the Confederate States nearly four million slaves, but as Mr. Rhodes says they "made no move to rise." In the graphic words of Henry Grady "a thousand torches would have disbanded the Southern army, but there was not one."

The negroes had no voice in reconstruction, nor did they propose or in any way help to carry the amendments to the Constitution which secure their rights. We forget that Andrew Johnson reconstructed the Southern States on a white basis, and that the legislatures of white men chosen by white votes at once passed laws which virtually re-established slavery. The amendments were adopted to save the country from such a calamity and to preserve forever the results of the war. The contemporary records abundantly establish these propositions.

If in the first few years the negroes made a foolish use of their newly acquired power, they acted under white leaders

who led them wrong, and who were able to do so, because the men to whom for four years they had shown such unexampled loyalty refused to lead them right. At the worst they acted as people act who are ignorant and unfamiliar with the business of government. Who had kept them so ignorant, and unprepared to exercise their rights as men? Compare them with the Bolsheviki or even with the French in 1789, and tell me that they suffer by the comparison. Compare their worst follies with the deeds of the Ku Klux Klan, or the atrocities of East St. Louis and Dyersburg, and you must admit that we white men who for centuries have been civilized, can cast no stone against them.

What is there then in the Negro which justifies or in any way excuses our treatment of his race. We brought him here and we have governed him ever since. The conditions which exist are of our own creation. We have made the laws under which he lives, we administer them. Save in a few states his vote is negligible. He has no representative in Congress or in executive office. He simply exists as God made him and as we have degraded him. While we deny these millions of men their rights as citizens, we demand of them the fulfillment of all the obligations of citizens. We tax their property, and in this supreme crisis of the world's history we demand their lives. Our conscription law recognizes no distinction of color, and loyally they answer their country's call.

They do not hold back or plot against the government as do the Sinn Feiners in Ireland, but now as always in our history they have been as ready to fight for their country as their white neighbors. Let me give you the testimony of his Southern white neighbors. It is from the Charlotte (N. C.) News that I quote:

"It is the marvel of the South, as it ought to be the admiration of the whole United States, that when the colored man in the hard stages of the war, through which we are beginning to pass, is being put to the test, he is measuring up to the full valuation of a citizen and a patriot. There has been nothing wanting about him. In every activity to which the mind of the country has been directed since it was committed by its great President to war, the Negro has fulfilled his obligation. There has not only been a total absence of resistance, but there has



been, rather a hearty response to every appeal of the government, a thorough fitting-in with every enterprise that had of necessity to be founded, first of all, upon a spirit of patriotism. These multiplied diversities need not be enumerated. What the colored man has done is made all the more glittering by what he has refused to do. His efforts and activities speak in terms of eloquence that become the despair of those who seek to portray them."

And to these words I add from the Charleston News and Courier the following:

"The Negroes have met the first test admirably. Both the drafted men and the Negro leaders of South Carolina have earned the commendation of them which is being freely voiced by white citizens everywhere. The leaders have realized, as it was hoped they would, that in a way their race is on trial. Evidently, they are determined that it shall acquit itself well."

Is there nothing in all this which touches the conscience of their countrymen, which appeals to their sense of justice?

It is a white man's problem which confronts us. The fault is in us, not in our colored neighbors. It is our senseless and wicked prejudice against our fellow-men which is the root of all our troubles. The question is how can we make the white people of this country recognize the rights which they themselves have given to the Negro, how can we induce them to enforce the laws which they themselves have made for his protection, how persuade them to do him simple justice, how lead them to allow him equal opportunity, to educate the men of whose ignorance we complain, to set the negro an example of civilization and not of worse than mediaeval brutality, in a word to help the Negro up and not to hold him down. We can blame him for nothing for we are responsible for him and his situation. Can we not make the American people feel how cruel, how wicked, how cowardly is their treatment of men who have never injured them, and who are in numbers and resources so much weaker? This is the question on the answer to which the future of this country in no small measure depends. For the crime of establishing and maintaining slavery the white people of this country paid bitterly by the

sufferings, losses and demoralization entailed by four years of civil war. We may well heed the words of Edmund Burke and "Reflect seriously on the possible consequences of keeping in the hearts of your community a bank of discontent, every hour accumulating, upon which every company of seditious men may draw at pleasure."

When the Irish troops were brought to London by James II, Macaulay tells us how they were regarded by the English.

"No man of English blood then regarded the aboriginal Irish as his countrymen. They did not belong to our branch of the great human family. They were distinguished from us by more than one moral and intellectual peculiarity. They had an aspect of their own, a mother tongue of their own," \* \* \* "They were therefore foreigners; and of all foreigners they were the most hated and despised; the most hated, for they had during five centuries always been our enemies; the most despised, for they were our vanquished, enslaved, and despoiled enemies. \* \* \* The Irish were almost as rude as the savages of Labrador. [The Englishman] was a freeman; the Irish were the hereditary serfs of his race. He worshipped God after a pure and rational fashion; the Irish were sunk in idolatry and superstition; \* \* \* and he very complacently inferred that he was naturally a being of a higher order than the Irishman, \* \* \* who were generally despised in our island as both a stupid and cowardly people."

Could the most prejudiced white man use stronger terms to paint the inferiority of his colored neighbor?

The Irish nation today is extremely prosperous, yet the memory of ancient wrongs coupled with the desire for greater political rights makes her a thorn in England's side, when England needs the loyal support of all her citizens. "England's extremity is Ireland's opportunity" in bitter truth. We may well bear this example in mind, and remember how small a fraction of the English Empire is the discontented part of Ireland, and how much this small discontent costs. Well may we ask what is in store for us. If it cost us four years of civil war to hold some three or four millions of ignorant Negroes in slavery, what may it not cost us to trample upon the rights and feelings of twelve million free-

men, constantly gaining in numbers and education, resources and self-respect! These are questions for me and for you, as well as for every citizen of the United States. What are you doing to answer them?

Men say that it is for the Southern States to deal with the situation, and that we must not interfere. So in 1850 they said that slavery was a Southern question and that none but Southern men could understand or deal with it. The Grand Army of the Republic living and dead, the soldiers' monuments in every town, the green graves in Southern and Northern land alike, bear witness to the falsity of the claim, and prove that the whole nation pays for the fault of any part. It was the blood of white men which was drawn by the sword to pay for the blood of black men drawn by the lash.

You may say that this is a rhetorical answer. Let us turn to facts and figures. The Presidential election of 1916 stirred the country deeply, and we may take the vote cast then to illustrate my point. Louisiana, Kansas and Mississippi are each entitled to 8 representatives in Congress, and must have therefore nearly equal populations. Ignoring the votes of the small parties, the people of Kansas cast 592,246 votes, the people of Louisiana 86,341 votes, the people of Mississippi 84,675. More than half the people of the latter state are colored, and the proportion is nearly as large in Louisiana. South Carolina with 7 representatives cast 63,396 votes, Arkansas with the same representation 160,296, while Connecticut with only 5 representatives cast 206,300. About 9,000 votes elected a representative from South Carolina. A few more than 10,000 chose one in Louisiana and Mississippi, if all the votes were cast for the winning candidates, and as only 1,550 Republican votes were cast in South Carolina, 4,253 in Mississippi and 6,466 in Louisiana, they do not seriously affect my point. In Kansas about 74,030 persons on an average voted for each representative, and the delegation was divided, 3 Republicans and 5 Democrats. Similar comparisons might be made between other states with like results. We should not perhaps be so greatly concerned if these figures merely meant a lack of interest on the part of the voters. Their significance lies in the fact that there was in the Southern States no conflict, for the reason that the negro vote was suppressed. The negroes are counted as voters in determining how many representatives the state shall have, but are

not allowed to cast their own votes, so that each Democrat votes for himself and for one or more negroes, and consequently exercises a much larger influence in the choice of President and Congress than the voter in Wisconsin or Massachusetts. In these states the voter casts one ballot, in the Southern States he casts two or three in effect. Remembering how small is the majority in the House of Representatives, it is clear that the policy of the country on all important questions like the incidence of taxation, as well as the administration of the laws, is determined by men who cast votes which they have no right to cast. Men say that "the South is in the saddle" and the political situation which that phrase describes is due to the suppression of the negro vote. If the negroes were not counted in the basis of representation, or if they were allowed to vote freely, this situation would not exist.

I am not concerned to consider whether the government which rests on a South thus made "solid" is good or bad. I dwell on the facts to make you see that the suppression of the negro vote does concern you. It takes away a large fraction of your voting power, and if you care whether the administration is in Republican or Democratic hands, or if you think it possible that cases may arise when issues must be decided which are vital to the country, you must realize that a situation is dangerous where large bodies of citizens can cast votes to which they are not entitled, when one man's vote counts two or three times as much as another's.

How is it with the Southern States themselves? Ask their wise men whether the present condition places the fittest citizens in power, ask them what its effect is on the political life of the community, and they will tell you that it is bad. Do not rely on the statements of men in office who owe their positions to the fact that the negroes cannot vote. They of course speak well of the bridge which has carried them safely over. Ask men who have retired and are disinterested spectators, ask the men of affairs, ask the students of history and if they answer fairly they will tell you that where there is only one party and no opposition in a free state, its government will not continue to be good; that where all great public questions are decided not upon their merits but according to a single prejudice, they cannot be decided wisely; and that where a whole community combines to perpetrate or tolerate

injustice upon any class of citizens or even upon a single man, no citizen's rights are safe, for every man's sense of justice is blunted, and he who rides to power on one prejudice today may be the victim of another prejudice tomorrow. The attempt to punish Dreyfus for a crime he did not commit, supported though it was by the highest officials and the strongest influences in France nearly overthrew the republic. We may take warning from that lesson. It is still as true as when the ancient statesman uttered it that "only that government is good where an injury to the meanest citizen is regarded as an injury to the State."

The suppression of the Negro vote injures the whole country, and we must all recognize this and insist that no man shall cast the ballot which belongs to another, and that the right of every citizen to cast his own vote shall be secure.

Does not the lack of education concern us? Can a country have a better asset than a body of well educated citizens? Have we such a superfluity of labor, is our business future so assured that we can afford to throw away competent men? Even if men are only to be used for cannon fodder, they need education to be good soldiers. Without it

- (1) They cannot sign their names.
- (2) They cannot read their orders posted daily on the bulletin board in camp.
- (3) They cannot read their manual of arms.
- (4) They cannot read their letters or write home.
- (5) They cannot understand the signals nor follow the signal corps in time of battle.

We may well be ashamed to think that out of 85,000 negroes who are enlisted in our ranks and ready to die for us "many cannot even write a letter to their anxious mothers at home so little training have they had in the schools of their country."

As in the human body a diseased part infects the whole, so in the body politic an ignorant and degraded body of citizens is a menace to the state. Such a class is bad company for its neighbors, its habitations are breeding places for pestilence which easily spreads from the hovel to the palace, they are also sources of moral infection which spreads even more readily and they offer retreats for criminals of every kind. They are in fact the basis for hostile raids by enemies of the community.

The Report on Negro Education to which reference has already been made, well says:

"However much the white and black millions may differ, however serious may be the problems of sanitation and education developed by the Negroes, the economic future of the South depends upon the adequate training of the black as well as the white workman of that section. The fertile soil, the magnificent forests, the extensive mineral resources, and the unharnessed waterfalls are awaiting the trained mind and the skilled hand of both the white man and the black man."

The following open letter by the Southern University Race Commission has been called "the most clear-cut statement in favor of the education of the Negroes that has been issued by any body of southern white men:

"The solution of all human problems ultimately rests upon rightly directed education. In its last analysis education simply means bringing forth all the native capacities of the individual for the benefit both of himself and of society. It is axiomatic that a developed plant, animal or man is far more valuable to society than an undeveloped one. It is likewise obvious that ignorance is the most fruitful source of human ills. Furthermore it is as true in a social as in a physical sense that a chain is no stronger than its weakest link. The good results thus far obtained, as shown by the Negro's progress within recent years, prompt the commission to urge the extension of his educational opportunities.

The inadequate provision for the education of the Negro is more than an injustice to him; it is an injury to the white man. The South can not realize its destiny if one-third of its population is undeveloped and inefficient. For our common welfare we must strive to cure disease wherever we find it, strengthen whatever is weak, and develop all that is undeveloped. The initial steps for increasing the efficiency and usefulness of the Negro race must necessarily be taken in the schoolroom'."

There is no answer to the question which Carl Schurz put to the Southern States:

"How can you expect to succeed in competition with neigh-

boring communities if it is your policy to keep your laborers ignorant and degraded when it is their policy to educate and elevate theirs?"

We are all interested in the prosperity of every community in this country. Whatever helps one helps us all. It is not, it cannot be a question which does not concern us whether education is given or denied to the Southern Negroes.

How is it with lynching? Does not this concern us all?

In the first place these horrors occur over a wide area. Pennsylvania and Illinois have furnished hideous examples as well as Georgia and Tennessee. While such crimes as these go unpunished and therefore evidently approved by public opinion, how can we denounce the cruelties of Germany? How do you suppose such things affect our country's reputation with really civilized nations? You can answer this question for yourselves if you will remember your boyish feelings about the North American Indians, who never did anything more cruel than these white Americans, or if you will imagine reading that such things had been done in Turkey, or Russia, or by Germans in Belgium or Poland. We must end these horrors at home before we can attack others abroad.

What are we doing? From the President of the United States down and by all great leaders of public opinion silence is maintained. When Prager was hung by the mob the Attorney-General of the United States at once brought the case before the Cabinet, the whole influence of the Administration was used to stir the authorities of Illinois to action and they responded. The prosecution failed because the jurymen did not realize what they were doing, but it was made clear that the government condemned the act. When however Dyersburg and Estill Springs stain our good name only a few voices of little authority are raised in protest, and no attempt is made to punish the criminals. College festivals come and go, but what college president, what orator at Commencement, takes the evil of lynching as his subject. The universal silence disgraces us more than the acts themselves. The lynchers are ruffians and act as such, but the silent statesmen, clergymen and scholars are the best men in the country.

If the effect on the country's good name is bad, what think you is the effect on ourselves? What education are the children getting whose mothers take them to witness such bar-

barities, and whose fathers hold them up that their view may be uninterrupted. They will govern this country in a few years, and how will they govern it. A community so brutalized as those communities must be where the men are thus tortured, is a bad neighbor. We do not let our little children torture animals for we know that the practice of cruelty depraves those who are guilty of it. Why are we silent when whole communities are thus degraded? If they were threatened with the destruction of property by conflagration or flood, we should rush to help them. Barbarism is a worse foe than flood or fire. It is a pestilence whose spread is not recognized until it breaks out in such horrors as that of East St. Louis. Should we not help them to stay its ravages?

Cannot you realize that your own house is on fire? Attorney-General Gregory in addressing the executive committee of the American Bar Association in May said:

"We must set our faces against lawlessness within our borders. Whatever we may say about the causes for our entering this war, we know that one of the principal reasons was the lawlessness of the German nation—what they have done in Belgium, and in northern France, and what we have reason to know they would do elsewhere. For us to tolerate lynching is to do the same thing that we are condemning in the Germans. Lynch law is the most cowardly of crimes.

"Invariably the victim is unarmed, while the men who lynch are armed and large in numbers. It is a deplorable thing under any circumstances, but at this time above all others it creates an extremely dangerous condition. I invite your help in meeting it.

"The two excuses usually given are that there are no adequate laws and that the laws we have are not properly enforced. The people of this country must be given to understand that we have means of protecting those in the field and those at home and what is being done to accomplish that result.

"I urge you through such machinery as you see fit to adopt to assist in getting before the people of this country the facts that laws are now on the statute books or will be within a few weeks which will reasonably protect the interior defences of our country, that an honest, ade-



quate and earnest force is dealing with this situation; and that unless the hysteria which results in the lynching of men is checked it will create a condition of lawlessness from which we will suffer for a hundred years."

He had in mind the case of Prager, but what he said applies with even greater force to the lynching of Negroes, and it is absolutely true. Lawlessness is a disease which spreads rapidly and insidiously. You have not forgotten the night-riders of Kentucky who terrorized large parts of the state and paralyzed the administration of the law for a considerable time. Their efforts were intended to prevent their neighbors from selling tobacco at prices and to a customer that they did not approve, in a word from exercising their unquestionable right to deal as they would with their own property. You must remember also the trials at Indianapolis and Los Angeles which showed that the leaders of labor unions had been engaged in a gigantic conspiracy to promote their objects by blowing up factories, bridges, buildings and newspaper offices causing enormous damage to property and more terrible danger to human life. You have not forgotten the case of Leo Frank in Georgia taken from the State Prison and lynched though he had been duly convicted and imprisoned according to law. The Georgia mob blamed the Governor for commuting his sentence from death to imprisonment and therefore killed him. The lynchers were known and might have been prosecuted, but they were set free, while the Governor who commuted the sentence was threatened with being lynched himself. You read in the newspapers every little while that some man has been tarred and feathered or otherwise abused because he has not bought as many liberty bonds as some of his neighbors think he ought to have bought. Criticism of the government is attended today with great risks even in the courts where extraordinary sentences are imposed for the expression of unpopular opinions. The mob is waiting in all these cases and ignorant of the facts asserts its own standard of patriotism or generosity, any deviation from which is punished by death without trial.

When this war is over we know that contests between employer and employee are certain, and the air is full of wild claims made by the Bolsheviki and their congeners all over the world. Such period of re-adjustment as that which awaits

this nation are always dangerous, and if lynchers go unpunished we may find their methods employed against the capitalists, the courts and the public officers who stand in the way of what the mob of the moment desires, and even counsel may share the fate of their clients. Lawyers have never been very popular since the days of Jack Cade, and many ruffians share his view that they should all be hanged. When the Missouri Compromise was repealed, Charles Sumner warned the Senate of the United States that they were sowing dragon's teeth which in time would arise as armed men. Four years of civil war proved him a true prophet. We are repeating the sowing, and the crop is just as sure. Believe me the dangers which threaten our civilization from lawlessness are greater and far more real than any which Prussian soldiers can inflict.

I have come half across the continent to see if I cannot make you realize the situation and stir some of you at least to action. We are lawyers, who more than any other men are bound to support the law. We understand what lawlessness means and what its dangers are. The men in the communities where lynchings occur, who are silent, must confess either that they approve the crimes or are too cowardly or too selfish to make a public protest. The ruffians are essentially weak, they are cowards or they would not treat as they do their helpless victims. Public opinion, the strongest force in any country once aroused and expressed would stop these outrages. There is no man in this country, North or South, in Massachusetts and Wisconsin as well as in Louisiana or Mississippi, who is not bound to help rouse this public opinion. If we are silent we also must admit that we are either cowardly, indifferent, or that we approve. Either attitude should be impossible. Let us speak out and keep speaking out until our condemnation is felt by every community, and the men who now commit these hideous barbarities learn from what we say that this country cannot tolerate them. The enforcement of the law by the constituted authorities would frighten the perpetrators. Are they afraid to do their duty? If so the community must give them courage or elect better men. If they dread the loss of office, make them realize that the law-abiding citizens have more votes than the criminal classes, and that they will not forgive neglect of duty.

We are asking our negro fellow-citizens to give their lives to their country. Such arguments as I have quoted from the

Vicksburg Herald might well have made them hesitate, but with cheerful readiness and loyalty they have come forward at our call. They have been met with jeers from many quarters, with insults, with the suggestions from high officers that they should not exercise their legal rights for fear of exciting unjust race prejudice, with proposals that they should serve as laborers and not as soldiers, but notwithstanding all these things they have never failed or faltered. They are men with feelings and ambitions like our own. Do you think they do not realize the contrast between Houston and East St. Louis. Of the occurrences at the latter the Grand Jury after investigation said:

"East St. Louis was visited by one of the worst race riots in history, a siege of murder, brutality, arson and other crimes, hitherto of such a loathsome character as to challenge belief. After hearing all evidence we believe the riots—at least the occurrences which led up to them—were deliberately plotted."

At Houston no one who reads the evidence can doubt that the negroes were stung into action by great provocation. Here are the comparative figures:

HOUSTON.	EAST ST. LOUIS.
17 white persons killed.	125 Negroes killed.
13 colored soldiers hanged.	10 colored men imprisoned
41 colored soldiers imprisoned for life.	for fourteen years.
4 colored soldiers imprisoned.	4 white men imprisoned
5 colored soldiers under sentence of death; temporarily reprieved by President.	14-15 years.
40 colored soldiers on trial for life.	5 white men imprisoned
<i>White policemen who caused the riot not even indicted.</i>	five years.
No <i>white</i> army officers tried.	11 white men imprisoned
(Military law.)	under one year.
	18 white men fined.
	1 colored man still on trial
	for life.
	17 white men acquitted.
	(Civil law.)

How does the contrast affect you?

We owe it to them, we owe it to ourselves that while they are giving their lives abroad to make the world safe for Democracy we should do our part to make this country safe for their kindred at home, or to quote a better phrase we should make America safe for Americans.

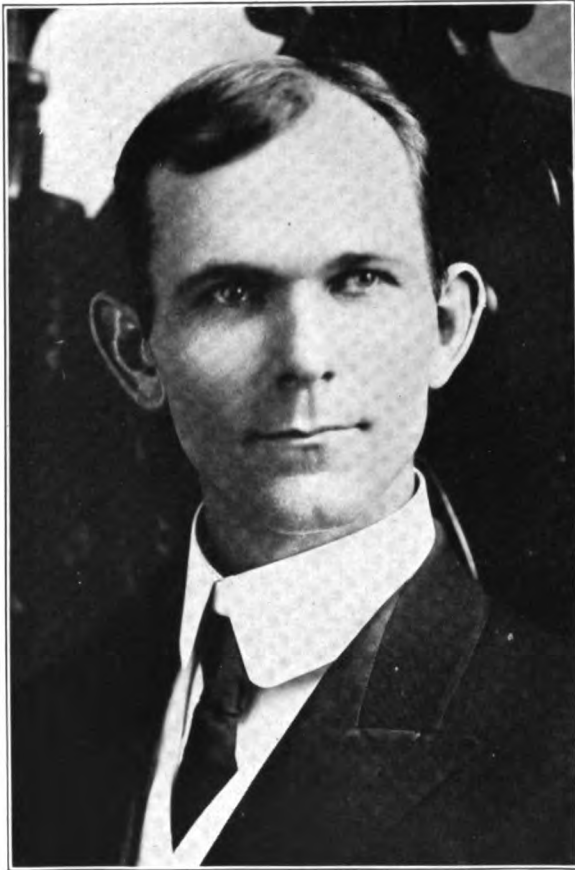
Upon me, upon all of you, rests the clear duty of helping create the public opinion which will accomplish this end. The time has been when in Wisconsin regard for human rights and determination that they should be respected animated this people, when they followed leaders who really believed in the principles proclaimed in the Declaration of Independence. May I express the hope that this faith is not dead and that the cause which I am advocating may find here leaders and friends.

ADDRESS BY W. R. VANCE,  
UNIVERSITY OF MINNESOTA, MINNEAPOLIS, MINN.  
ON THE SUBJECT  
THE NEED OF INTERNATIONAL ORGANIZATION.

DELIVERED JUNE 26, 1918.

The unity of the American people in the prosecution of the great war for democracy is inspiring. Their determination to allow nothing, however important in itself, to divert them from their purpose to press on to as speedy a victory as possible is splendid. Possibly one should expect that out of this national attitude should arise in some quarters a certain spirit of intolerance manifested towards any effort to look forward in preparation for the period after the victory has been won, as won it must be and will be. It is this spirit which applies the damning name of pacifist to every man who seriously proposes to discuss methods by which the victory, when achieved, may be so used as to prevent the recurrence of the terrible catastrophe that has fallen upon the earth. But I am convinced that our people are too strong in their determination to see the war through to need to lash themselves into a fury. The "eat-'em-alive" orator, or the "fire eating" militarist may win applause in the chance crowd, but it is not such as they who will bring America in triumph through all the sacrifices of this most terrible of wars. The most of us now realize how greatly we have been handicapped by the lack of a carefully worked out plan to unify our thought and guide our action in the emergency that has come upon us. In such unpreparedness we shall not again be caught. In time of war let us prepare for the peace that sooner or later we shall win by force of arms.

To all those who still feel that somehow there is something unpatriotic in thinking of peace while war is still raging, I would commend the story of the famous merchant prince, whose great emporium was in flames beyond hope of saving. While the fire was still raging his friends sought him out to extend to him their sympathetic offers of aid. To their great surprise they found him in the office of an architect deep in



WM. R. VANCE.



the preparation of plans for a better and greater structure to replace that which was falling in ruins. Our old world order is fast vanishing amid the fires of the world war. It is high time that we begin seriously to lay plans for one that is better.

If we make no plans, what will happen at the end of the war? The most careless reader of history can make answer. The practical statesmen then in charge will do the same stupid thing that practical statesmen have always done heretofore. They will sit about the conference table and play the same old game of bluff, intrigue, trickery and threats that diplomatists have always played. Guided by the time dishonored principle,

“\* \* \* The simple plan,  
That they should take who have the power,  
And they should keep who can,”

they will make a settlement involving “rectifications of frontiers,” “readjustments of boundaries” and all the other pitiful diplomatic phrases by which international robberies have always been given an outer semblance of respectability. Of course, there will be much use of the new talk about “self-determination,” “no annexation or indemnities,” etc., but just as at Brest-Litovsk, at the psychological minute the military delegates of the victors will strike the table with their sword hilts, and the lines will be fixed. Since they will be good British, French, Italian and American swords we shall probably feel convinced that on the whole the lines so fixed are in accordance with justice and right, but a large part of the world will not think so. The vanquished will depart from the peace conference full of hatred and bitterness and with hearts lusting for revenge. The victors, if happily they escape a quarrel over the division of the spoils, will realize that their new acquisitions, whether they be Syria, Mesopotamia, Dalmatia, German Africa, or the islands of the sea, must be protected against the vengeful losers. Then will follow a race in preparation for the next war horrible to contemplate. The armed camps which covered the continental countries before the outbreak of the great war will seem like trifling militia posts as compared with the mighty hosts which every one of the great powers, including our own country, must keep in readiness for the attack that will surely come. And worse still, all the forces of science, so barbar-



ously introduced into this war by the ruthless Huns, will be mobilized into ever more terrible destructive agencies, each nation vying with the others in its efforts to devise more frightful engines of death and damage than were known before. It cannot be questioned that such conditions would result in another war far more terrible than the world conflict now raging, with science, long hailed as the handmaiden of civilization, become a cruel weapon with which the human race might commit suicide.

That such a gruesome picture is not overdrawn is clear when we perceive how near the world has come to destroying itself in the present war by the use of new agencies of frightfulness never before tried, and as yet only partly developed; the submarine, the aerial torpedo hurled upon defenseless cities, the poisonous gases, confined as yet to combat, the bombardment of open towns by long range guns, the atrocious wrongs to the persons and property of helpless non-combatants, and lastly the poisoning of wells and spreading of disease germs, not yet openly admitted. Allow the scientists of the world twenty years in which to develop these new agencies of destruction and these resurrected practices of what we thought was a long past barbarism, and then visualize the next war, if you dare do it. No, my friends, the return of the jungle to the civilized world is too horrible to contemplate. The human race must not be guilty of the supreme folly of suicide. There must be found some avenue of escape from a fate at once so cowardly and so stupid. Where does it lie?

During the centuries past many attempts have been made to establish world peace and make it permanent. Few men, either of our age or of other times, have loved war for itself. It is true Treitschke and his school believed that "a good war hallows every cause," and some peculiarly foolish Germans have declared war a biological necessity. But such people show forth merely the mental aberration of a nation intoxicated with the unexpectedly easy and profitable victory of 1870 over the French. As a rule men have fought only to gain their ends, and they have desired to make victorious peace permanent. Many are the expedients they have tried, and all have failed. The oldest, and the newest, and on the whole, the most nearly successful, is world dominion. The Roman world was substantially at peace for nearly four

hundred years; but when at last the Roman peace was broken, the existing civilization fell in the collapse of the dominating power. The German government unquestionably wishes to give the world a German peace of the same sort, as a result of German world domination.

Then came the Holy Roman Empire, the Holy Alliance, the concert of Europe, the balance of power, and the doctrine of universal training and invincible armament, that was to insure peace because no other nation would dare attack the invincible one. As if to make a ghastly joke, this doctrine wholly ignores the effect of an attack by the nation so invincibly armed. And lastly, there were the Hague conventions, that now appear pitiful in their seeming futility. Possibly, however, they may have the same meaning as an acorn buried beneath the snow, awaiting the coming of the spring.

But history has condemned them all. None have kept the peace. If we are to save mankind from destruction through future wars, some other means of preserving the peace must be devised. Before the eyes of all forward looking men there has arisen the vision of a great hope; the organization of the nations of the world into a great federal league to keep the peace; and slowly the responsible thinkers of the world are coming to the belief that such a league offers the only hope. It is not a new vision. It came as long ago as 1804 to the generous minded young Czar of Russia, Alexander I, and ever since there have been men to keep alive the far off vision. But until very recently it has been though a dream of Utopians; and perhaps it was but a dream in a world wholly unready for it. But history's forge has been at a white heat since that fatal August day in 1914, and new world conditions are beaten out by the terrible hammer of war with a rapidity never known before. The logic of events calls the hour to make the dream come true. On July 4, 1915, at Independence Hall in Philadelphia, just 139 years after the publication of the great American declaration of national independence, the American League to Enforce Peace, with its declaration of the interdependence of nations, was established under the leadership of that great-hearted, high-minded American, William Howard Taft, supported by such trusted leaders of American thought as Elihu Root, Charles E. Hughes, and A. Lawrence Lowell, the distinguished President of Harvard University. In May, 1916, the President

of the United States, that remarkable man who is fast becoming recognized as one of the great leaders not only of American thought, but of the thought and hopes of the whole world, came squarely out in support of the program of the League to Enforce Peace. In the meantime, the English League of Nations Society was formed under the leadership of Lord Bryce, so greatly loved and trusted in America. The leading British statesmen gave their adherence, and were promptly followed by nearly all the principal statesmen on the Continent, including Von Bethman Holweg, who, with that modesty so characteristic of the Teuton, said that not only would Germany join such a league after the war; she would lead it! Thus it is clearly seen that the vision of world organization is not the dream of a lot of impractical theorists or cranks, but the carefully worked out plan of trusted leaders in public life.

At this point you will probably ask—What is the precise scheme of world organization that is proposed? In reply, one may say that it would be as foolish at this time to fix the exact details of the plan of world organization as it would have been for those statesmen who brought about the assembling of the Constitutional Convention in 1787 to send out a specific form of constitution to be adopted by the Convention. The important thing at the present time is to convince the thinking people of the world that some form of world organization is both necessary and possible. The details of the scheme finally to be adopted must be left to be worked out by the members of the great peace conference in the light of the conditions existing at the time they assemble.

For our present purposes it is sufficient to say that the specific programs of the American and English societies for the promotion of a League to Enforce Peace contain only the most rudimentary principles upon which it was believed that most intelligent men could readily unite. They propose a great treaty to be signed not only by the belligerent nations, but by all other civilized nations that can be induced to become signatories. This treaty will establish a great world alliance, not a world confederation. It will provide for the establishment of a world court that is to be a judicial tribunal deciding disputes between nations in accordance with the law and the facts of each case, and not in accordance with the

slippery principles of diplomatic compromise and concession. Before this court are to be brought all international disputes involving questions of law, as for instance, the interpretation of a treaty; or a question of fact, as for instance, whether the government of Serbia did or did not criminally participate in the murder of the Archduke at Sarajevo. The treaty will further provide for the establishment of a great council of conciliation before which shall be brought all disputes involving so-called national policies not determinable as questions of law or fact, as for example, that settled policy of the United States government known as the Monroe Doctrine, or the policy of the British government known as the Two-fleet Standard. This council of conciliation is also to have certain rudimentary legislative powers. The program of the American society provides that the machinery for settlement of international disputes shall apply only to disputes between members of the League, while the English society includes disputes between a member of the League and a non-member nation. In my opinion, the English proposal is distinctly superior. The American scheme provides for the joint use of both economic and military forces of the League members against any one of their number that goes to war or commits acts of hostility before submitting the question to judicial determination or conciliation according to its nature. It does not provide for the use of force in compelling obedience to the decrees of the world court or the findings of the council of conciliation, the theory being that the force of world sentiment after a careful and impartial judicial determination of an international dispute will be such as to compel obedience to the award. On the other hand, the English program contemplates the use of the whole power of the League, both economic and military, to compel submission of international disputes to the world tribunal and also obedience to the award made by such tribunal. Again the English scheme seems better. The program of neither the English nor the American societies stipulates for disarmament. But there can be little question that the present sentiment of the thinking world would be largely agreed upon the necessity of including in any such treaty of world alliance a provision abolishing universal military training and reducing armaments, whether military or naval, to a police basis that might be

fixed, with a certain percentage of the population or the gross commercial tonnage of the particular nation as a maxim.

These suggested details of the proposed world organization are given, let it be understood, merely as matters of interest and not as conditions essential to such organization. In my opinion, the only conditions to be regarded as absolutely essential to the organization are the establishment of the world court, the adequate provision to compel submission of and disputes to such court, and the reduction of armaments, together with its corollary, the abolition of universal military training. The formulation of these provisions deemed essential and all the other administrative details may safely and wisely be left to the great peace conference whose members may perhaps have learned as much between this day and the date of assembly as they undoubtedly have since the outbreak of the war to the present time.

Giving our thought, then, to the barest essential outline of the scheme of world organization, the great question is—Will it work?

There are certain patent objections to the scheme, easily noted by all, which may first be disposed of—

1. The first and most conclusive objection in the minds of many is that the whole scheme is theoretical and untried. That is quite true. The same thing was once true of every device that differentiates our so-called civilization from the jungle out of which the race has slowly come. The question is, does the theory so relate itself to known facts as to give reasonable promise that it will prove workable when put in practice. That it does I shall endeavor presently to demonstrate.

2. It is said that the proposed league or alliance is too loose to function successfully; that a confederation of the nations, a sort of United States of the World, would succeed much better. Granted: but a confederation could not be brought about while possibly a League can. We would better strive for what we can get than lose all by seeking too much.

3. It is also said that nations will not give up their cherished sovereignty even to the limited extent required by the League program. That it will be difficult to induce them to so do is quite true. Especially will it be difficult to induce the Senate of the United States to consent to a treaty not contemplated by the Constitution, and binding our country to

submit to a certain amount of control at the hands of other nations through rules of international law that have behind them the sanction of not only world public opinion, but also of world military force. It is because of this very real difficulty that we need to discuss the proposal throughout the country so that it may be understood by all, and all be ready to act wisely when the time comes for decision. It may here be added that there is nothing of inherent truth in the abhorrent German theory of the independent state as the only and final arbiter of the justice of its claims and the righteousness of its actions; that it owes no duty to other nations which it is obliged to observe when opposed to its own interests. Such a theory as to the rights of the individual member of any social community would disrupt the community, and render any orderly social organization impossible. No individual, unless he be an I. W. W. of the lowest order of intelligence, would for a moment contend that he can be a law unto himself, or question the obvious fact that his freedom of action is necessarily restricted by the presence of other individuals in the community, each entitled to protection in the enjoyment of his own limited rights. Why, then, should an individual nation in the community of nations be a law unto itself? Why should it claim absolute independence of action, the absolute right to work its will without regard to the rights of sister nations, recognizing no limitations save those of savage force? Shall a powerful nation clamoring for a place in the sun, seize the sunny lands of its neighbor because forsooth, that neighbor, as France in 1871, lies broken and helpless at her feet? Shall she overrun and destroy little Belgium because, as sole arbiter of her own conduct, she has decided that such a course is, on the whole, advantageous in the prosecution of her devilish scheme of conquest? Shall she sink without warning an unarmed passenger steamer, sending to their watery graves many hundreds of helpless non-combatants, including women and children, because, again the sole judge of her actions, she decides that on the whole it will promote her own interests to commit so foul a crime? No. It is a damnable doctrine growing out of the false assumption that absolute sovereignty gives also absolute independence of action. We will have no more of such dangerous heresy. On the contrary, self-evident truth fairly glows in the words of President Wilson, spoken

when making the momentous decision for war on April 2, 1917. He said: "We are at the beginning of an age in which it will be insisted that the same standards of conduct and of responsibility for wrong done shall be observed among nations and their governments that are observed among the individual citizens of civilized states." Yes, we are determined that Prussia shall no longer be left free to decide for herself just when she will rob and murder and lay waste. And the judgment we mete out to Prussia must be measured unto ourselves. As a nation, I think we have tried to live up to our democratic ideals, we have tried to make our public acts square with the principles of morality and justice, but that we have always done so, or shall in the future succeed always in doing so, is too much to expect. We cannot be impartial judges in our own case. In the name of peace we shall deny Prussia's claim to be absolutely independent in action. In the same holy cause we must give up the same claim for our own country.

So much for the negative aspects of the question. Let us now advert to some considerations that seem to justify a positive belief that the proposed theory of world organization may be reduced to practical operation.

1. In the first place we actually now have a sort of common law league of nations to conquer peace. Under the fierce stress of war there has arisen before our very eyes an almost incredible union of some twenty-one independent nations, united in a great common purpose and forced to join action in regard to many important military, naval, industrial and economic enterprises. Among most of the members of this league there is no treaty bond, but there is none the less a close alliance by understanding growing out of a single overtowering common purpose to win peace of such a kind that it may be permanent. In the Interallied Council sitting at Versailles we have a rudimentary legislative and administrative body, and in the single command of the vast Allied armies we have a highly significant league function.

2. There have been for many years certain joint international administrative agencies, established and maintained by international agreement, which have operated with great success. As examples we may mention the International Postal Union, and the International Institute of Agriculture.

3. By analogy with the development of national organiza-

tion and law, we might expect a similar process in the development of international organization and law if only the process were once successfully inaugurated. Our community law, what we term our common law, had its real origin in the necessity of maintaining peace in the community. As Professor John C. Gray was fond of saying, the purpose of the law is to prevent the breaking of heads. Not only the body of the law, but all of its administrative processes, developed about the ever present necessity of preserving the king's peace. In like manner international law may well have its regeneration in the need to secure peace, and its much needed sanctions may develop around the pressing necessity of preserving world peace.

4. The final consideration that I would present to you as holding out hope for the success of a League of Nations is by far the most important, and certainly the most interesting to American lawyers. In 1775, and more specifically in 1787, there was formed a League of sovereign states that has endured to this day, and bids fair now to prove the salvation of the democratic world in war as it has been, for nearly a century and a half, the world's best hope in peace. The sovereign states that sent delegates to the Convention of 1787 were to all intents independent states. The articles of confederation amounted to little more than a treaty of alliance. Among these independent states were boundary disputes, trade rivalries, customs discriminations, retaliatory legislation, and all the other seeds of discord that have provoked wars in other lands from the beginning of history. Shortly before the call for the convention, armed conflicts broke out in two instances and were prevented from developing into bloody little wars only through the personal influence of General Washington. So near did we come to the perpetuation of the state of international chaos which has soaked the pages of history with blood since the time when history first began.

The keystone of the arch which supported the new league of states, known as the United States of America, was the Supreme Court, which, through the far-sighted genius of the makers of the Constitution, was given jurisdiction over "controversies between two or more states." Lawyers have given too little attention to the fact that this great court when hearing a controversy between two sovereign states of the



Union, sits as an international court, as well as a federal court; and that in determining such controversy it applies the principles of international law as well as those of municipal law. This is forcefully declared by the Supreme Court when determining the great controversy between Kansas and Colorado (185 U. S. 125), in which it used the following language: "Sitting as it were as an international as well as a domestic tribunal we apply federal law, state law and international law as the exigencies of the particular case may demand." The function of the court in maintaining the peace between sovereign states is well expressed in the case of *Georgia vs. Tennessee Copper Company* (206 U. S. 230): "When the states by their union made the forcible abatement of outside nuisances impossible to each they did not thereby agree to submit to whatever might be done. They did not renounce the possibility of making reasonable demands on the ground of their still remaining quasi-sovereign interests; and the alternative to force is a suit in this court." In its capacity as an international tribunal the Supreme Court has settled controversies of the most serious character between states, involving questions of the kind that have frequently in other lands brought on bloody wars. Perhaps the most interesting, and certainly the most fiercely contested controversy between two states to be settled by the Supreme Court, is that between Virginia and West Virginia, growing out of the separation of West Virginia from Virginia and the former's refusal to pay its just part of the original public debt. The suit was first brought in 1906, and only on April 22nd last the court decided that a writ of mandamus might, on the proper showing, issue against the legislature of the state of West Virginia to compel the levying of a tax to pay a judgment rendered in favor of the state of Virginia.

You will doubtless at this point say that the success of the Supreme Court of the United States in settling so many dangerous controversies between the sovereign states of the Union affords no reason for expecting similar success to result from the adjudications of a world court; that the United States form a closely knit confederation while the proposed League of Nations will be but an alliance; and that behind the judgments of the Supreme Court of the United States there has always stood the military power of the United States government. But it is interesting to observe in the

fascinating history of the Supreme Court of the United States that in no single instance has that court ever called upon the executive to enforce one of its decrees by the use of the military forces of the federal government. In fact, when the state of Georgia refused to obey the decree of the Supreme Court rendered in the case of *Worcester vs. Georgia* (6 Pet. 515), President Andrew Jackson made his famous statement: "John Marshall has made his decision. Now let him enforce it." In an earlier case, *Chisholm vs. Georgia* (2 Dell. 419), Georgia not only refused to obey a decree of the Supreme Court, but even went so far as to pass a law making it a capital offense for any judge in the state to recognize the judgment of the Supreme Court. In 1854 the people of Wisconsin became so excited over the slavery issue that the state Supreme Court refused to obey the mandate of the Supreme Court of the United States with reference to the conviction of one Booth who had aided in the escape of a slave. (21 How. 506.) This magnificent defiance of the Supreme Court of the United States by the state of Wisconsin and the consequent extreme doctrine of states' rights erected upon such defiance remained the principal political issues in this state for some three or four years.

These facts show that the ready obedience now given under all circumstances to the orders of the Supreme Court is due not so much to the armed forces that might possibly have been used to support such orders, but rather to the slowly developing public sentiment which came to recognize and fully understand the essential and beneficent function of this great court. If the writ of mandamus does issue against the legislature of the state of West Virginia it will be obeyed not because of a federal army sent to invade the territory of West Virginia, but because existence would become impossible to a state that put itself in the position of an outlaw in the sisterhood of states.

By analogy I think we have reason to hope that the judgment of a great and impartial world court, rendered after careful investigation of the evidence involved in a dispute between two nations and of the law applicable to it, would so commend itself to the opinion of all peoples that any nation refusing to obey such judgment would find itself more hopelessly an outlaw in the sisterhood of nations than is guilty Prussia at this time. Never before in all the world's history

was there so opportune a time for the establishment of such an international court. When this war comes to an end war will be detested as never before in the history of the race. For two decades there will be no government that will be permitted by its people to begin an aggressive war. There will thus be a considerable period during which adjudications by the world court would be unquestionably enforced by public sentiment in the homes of the litigant nations. There is fair reason to hope that if the practice of obeying the mandates of the court should remain uniform for a quarter of a century it would become so firmly fixed as a rule of conduct among all the peoples of the world that disobedience would be a rare occurrence and result in disastrous consequences to the outlaw.

In closing, let us note specifically the relation of this great question to our own country. As I see the future there are just two alternatives before us, and no middle ground between us. Either we must force the peace conference, however unwilling some of its members may be, to form a league of nations, with general disarmament and abolition of universal military training, or lacking such international organization, we must see to it that America's military organization becomes more terrible and more efficient than that of Germany, and that America's navy becomes more powerful than that of any other nation. We must set ourselves to become what Germany attempted and could not be, invincible in arms, so that when the smoke of the next great war, in which there will be no neutrals whatever, shall have cleared away, we may perchance find ourselves surviving, however sorely maimed. And if we must thus rely upon force to preserve us, we must not forget to cultivate its inseparable partner, fraud and trickery. Not only must we have universal training and the greatest army and navy in the world, we must send out an army of spies into all lands, to learn how we may most successfully stab our neighbors in the back while we smile in their faces. We must weave a net of intrigue over lands with which we are at peace, so as to set one country against another, so that both may be weaker, and less dangerous to ourselves. Then, having, by adopting these purely defensive measures, become unfit to live in an honest world, we might proceed to rob our weaker neighbors whenever, upon a cunning calculation of the chances, we might feel that we could

get away with the loot. Then, of course, we must become hard. We must banish such sentimental weaknesses as chivalry and pity. And we must not forget to train our children as the children of a warrior nation should be trained, so that when we feel inclined to sink a greater Lusitania they will be able to celebrate the triumph with the proper spirit. Verily, the great doctrine that might makes right is a wonder worker in destroying the very foundations of national character. Yes, it is a great doctrine, the doctrine of the destruction of all things, including self destruction, the doctrine of suicide.

At a time of crisis in our American life Patrick Henry gave utterance to the paramount thought of the time when he hurled into the face of the pig-headed Prussian tyrant who sat on the throne of Great Britain the slogan "Give me liberty or give me death." The unspeakable Bernhardt crystalized the cardinal principle of German teaching in the age of Germany's apostasy when he gave out the slogan, "Weltmacht oder Niedergang," World Dominion or Destruction. To us of different ideals, this slogan is unspeakably horrible. To offset it I would leave with you another. We are now facing the gravest crisis in all the world's history, not merely for the world at large, but for our beautiful and bountiful America as well. The terror of this crisis and the hope of it, give us the slogan, "World organization or suicide."

## THE WAR—A TEST OF DEMOCRACY.

By HON. M. B. ROSENBERY.

DELIVERED JUNE 26, 1918.

We live at a supreme moment in the history of the world, and in a critical period in the history of Christian civilization. Prior to 1914 most of us had settled opinions and beliefs in regard to the social, political, economic and religious life of our country and of the world. Many of us had come to believe that great wars were a thing of the past; that the fundamental doctrines of Christianity had obtained such a hold upon the people of the world that the conduct of nations as well as of individuals must conform thereto. Since August 1, 1914, we have seen many of these opinions and beliefs swept away as wholly and completely as the houses of sand built upon the sea shore by children are obliterated by the incoming tide.

There have always been many great crises in the history of the world. Five hundred years before the beginning of the Christian era there was fought upon the plains at Marathon a battle between the Athenians and the Persians, which, supplemented as it was by the great battle of Platea and Salamis, determined for all time whether Greek culture and civilization should predominate over the culture and civilization of Persia in the western world. When the defeated army of Darius, driven into the sea by the victorious Greeks, took ship, it was the climax of a great drama in the history of nations. About three hundred years later there was fought in some unidentified spot in northern Africa the great battle of Zama, which broke the power of Carthage and established the supremacy of Rome in the western world during the succeeding centuries.

In the year of our Lord 732, the armies of Charles Martell met the Saracen hosts in the Province of Touraine in the great decisive battle of Tours. As a result of that battle western Europe was forever wrested from Mohammedism, and the crescent has never since met the cross in the territory that day won for Christendom. On the 19th of July, 1588,



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after more than a year of preparation, Phillip the Second of Spain, then the absolute master of the greatest empire of the world, sent the Armada against the English navy. The ensuing battle decided once and for all whether Latin or Anglo-Saxon culture should dominate western and northern Europe. The English navy won and the British Empire was firmly established.

Again in 1815, at Waterloo the English and German armies under the command of the Duke of Wellington and Blucher met the re-established armies of Napoleon on the plains of Belgium. For more than twenty years the ambition of one man had dominated Europe; for the advancement of his personal ambition and to acquire power he had made Europe a bloody battlefield, and if on that June day Wellington's veterans had given 'way before the repeated charges and onslaughts of the Old Guard before Blucher's army arrived, a great autocratic military power would have been enthroned which would have taken decades if not centuries to overthrow.

In all these great crises of the world's history the contest has been not only between rulers, armies and peoples, but fundamentally between irreconcilable ideals: social, religious, political and economic. No compromise could have been made by which Greek and Persian civilization could live side by side upon the same soil; each was absolutely antagonistic to the other. Two commercial rivals could not live in peace on the Mediterranean, so either Rome or Carthage had to fall. There was no ground for compromise between the Mohammedan and the Christian, and the issue could only be determined upon the bloody field of Tours. So too the ideals of Latin and Anglo-Saxon civilization were incompatible, and the destruction of the Armada determined which of them thereafter should be the dominant force in the world. At Waterloo Napoleon's dream of a great autocratic military empire which should be the pawn and plaything of an aristocracy created by him was forever shattered, and the right of the peoples of Europe to work out their own destiny in their own way was reasserted.

These and many other examples which might be cited, tend to prove that, up to the present time at least, when two irreconcilable ideals clash there can be no settlement of the final issue except by a trial of physical strength upon the field of battle. In the face of such a situation man becomes again a



primal, elemental being. Stripped of all the veneer of civilization he goes out to fight in a different way, but not in a different spirit than his cave dwelling ancestors fought in the dim ages of the past. This war which rocks the foundations of society as the mighty hills are rocked by an earthquake, is an unavoidable conflict because it is a contest between two inherently inconsistent and irreconcilable ideals. On the one hand we have a great autocratic military power with its conception of the State as being above all law, human and Divine, governed and controlled by an aristocratic class who claim that they have by Divine sanction not only the right but the duty to impose their will upon their own and all other peoples by force. Opposed to this we have Democracy, which is best described in the words of Lincoln as a "government of the people, by the people and for the people." It is manifest that democracy as we understand it cannot exist long in a world dominated by an aggressive military autocracy bent upon conquest and upon imposing its ideals upon other nations and other peoples. The social and economic ideals as well as the political ideals of a people who willingly submit to class government are absolutely alien to a people who believe that all just government rests upon the consent of the governed. People so widely separated in their ideals think in different terms, have a different philosophy, widely divergent aims and national purposes, and compromise is impossible because there is no common ground upon which they may meet.

As the Greeks fought at Marathon to preserve Greek culture and civilization; as the Romans fought at Zama for commercial supremacy and their national life; as the Christian armies fought under Martell at Tours; as the English navy fought in the battle of the Armada to make Anglo-Saxon civilization a dominant force in the world; as England and Germany fought at Waterloo to defeat Napoleon's plan to dominate the political and economic life of the world, so we fight today upon the plains of France in defense of democracy. The result of this war will determine the place which democracy as we understand that term will occupy in the world not only in the succeeding decades, but in the centuries to come.

In none of the great crises in the world's history has the issue been more sharply made up than in this crisis. We fight in defense of democracy because the battle has been car-

ried to democracy, and therefore there remains nothing for us to do but to fight on to the bitter end or submit to the inevitable domination of class government.

Many of our people think and more have thought that we should have delayed our entrance into this war until it was brought to our own soil. Many people do not realize that the world is today, by reason of improved facilities of transportation and means of communication, substantially one commercial and economic unit. Unless our people are to live in some such primitive way as the great peasant class of Russia live, we must take our place in the world and not only receive our share of the privileges and benefits resulting therefrom, but we must assume our share of the duties and responsibilities.

If at the close of this war Germany remains unbroken in spirit, unchanged in ideals and unmoved by the appalling suffering brought upon the world by the devotees of its false philosophy, then we and every other nation must prepare to meet at an instant's warning the organized forces of aristocracy and autocracy. We must maintain great armies and navies, reorganize our industrial, commercial and agricultural life on a basis which will make it efficient for war. In other words, in order to resist Prussian aggression we shall be obliged, to some extent at least, to adopt Prussian methods to defend and protect ourselves.

If we do not win this war, we and our children's children will be dominated by the authority and power of a great military autocracy, triumphant, vindictive and aggressive. The blight of this curse will fall upon us even if no German soldier or German man of war should ever cross the Atlantic. So long as there exists a mighty autocratic military power, relentless and aggressive, which refuses to acknowledge the sanctity of treaties and the rights of independent states,—a power to which equality, liberty and fraternity are mere names, we must be prepared to cope with that power again and again if we wish to preserve our institutions and our economic and political liberty.

It is to free ourselves and the world from this threat of imposed militarism, which is in its very nature autocratic, and to preserve for our children our democratic institutions as we received them from our fathers that we fight this war. Because it is a contest between inherently irreconcilable ideals

there is no room for compromise or settlement. The Prussian aristocracy, pursuant to a far seeing plan, impressed and misled the great masses of the German people, and it will never release the grip which it has upon Germany and the conquered territory over which it now has sway until compelled to do so by physical force. Under such circumstances arbitration is impossible and unthinkable; diplomacy has no place and can have none until the hold of Prussian aristocracy shall be broken and its military power overcome.

Do we believe in the principles of liberty, equality and fraternity? Do we believe that the power of all just government must be derived from the consent of the governed? Do we believe that all men are created equal; that they are endowed by their creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness? Do these principles embody our ideals of a just government? If we really believe in these principles and cherish these ideals we shall fight for them. If we are not willing to pay the utmost price to maintain and preserve them, then we love that which we withhold more than we love our ideals. If Miltiades and his fellows had thought more of personal safety, of riches and easy luxurious life than they did of Athenian institutions, the battle of Marathon would not have been fought and Greek civilization and culture would have been lost to the western world. If Charles Martell and that host of brave men who fought with him at Tours had not been willing to sacrifice their lives in upholding the cross against the crescent, no man even at this time can measure what the possible results of failure might have been.

If England and Germany had compromised with Napoleon and given him an opportunity to reform his armies and re-establish himself, the battle of Waterloo might have been postponed, but a Waterloo had to be fought and won or the great impetus given to human freedom, liberty, equality and fraternity by the French revolution would have been diminished if not entirely lost.

The ideals of the Prussian aristocracy, social, economic and political, are as inconsistent with our social, economic and political ideals as was Persian and Athenian culture, as was Mohammedism and Christianity. Their ideals and ours are total irreconcilable, incompatible and inconsistent; they cannot live upon the same soil; they cannot exist in the same

world without re-acting one upon the other. So long as Prussian aristocracy sought to impose its ideals only upon the people of Germany the world was not vitally concerned. When in 1914 it laid its hands upon the small states of Europe and prepared to dominate the life of the world and to impose its ideals and institutions upon other people by force, a contest was started which can end only by victory for one side or the other.

Before we fully realized the true nature of this contest, we thought there might be, as there has been in many wars, peace without victory. It took us a long time definitely to realize and actually to believe that the Prussian aristocracy had formed a plan to dominate Europe and that it was proceeding to put it into execution. But in the years that have passed since August, 1914, evidence has piled mountain high that such is the real purpose of the present imperial government and that it has set out to accomplish it. One small state after another has been crushed with a ruthlessness and barbarity that has seldom if ever been equaled in history. The treatment which Russia has received at the hands of the imperial government has convinced the civilized world that if other countries are to preserve their institutions and remain free and independent not only politically but socially and economically, this conflict must be fought through to the finish.

This war is not only a war *for* democracy; it is a very real and vital sense a test *of* democracy. Every organism must be able to maintain itself in its own environment or it must perish. This is as true of a democracy as it is of the humblest organism; it is as it were the ordeal of trial by battle.

In a democracy the individual citizen not only has the high privilege of being a part of the government, but upon him rests the corresponding responsibility for the success or failure of the government to which he has consented. In the ultimate analysis the responsibility for the success or failure of our democracy cannot be shifted to the shoulders of the President, Congress, the Army and Navy, or any other part or all of the government; it rests immediately and directly upon each individual citizen. If we fail to meet and discharge the duties and responsibilities imposed upon us by this relationship, democracy to that extent will fail. The idea of individual responsibility is inherent in the very conception of

a democracy, and to the extent that we permit ourselves to depart from this conception we cease to be a democracy and become to that extent autocratic. Democracy is nothing but a name, a sounding brass and a tinkling symbol, unless it embodies the real ideals, hopes and aspirations of the whole people of a country. We must look beyond the name, beyond the form, to the substance; that is the vital and essential thing.

In the *Atlantic Monthly* for April, 1915, Dr. Elliott pointed out that this war, which had then, as we now know, but just begun, would determine the relative value of autocratic and democratic institutions. It was his opinion that the result of the war would demonstrate the relative industrial, commercial, economic and military merits of autocracy and democracy. At that time the situation was somewhat clouded by the fact that the great Russian autocracy was arrayed on the side of democracy, an apparently inconsistent position. Subsequent events, however, tend to show that the inconsistency was more apparent than real.

Unless the war is won, all speculation as to the situation of our own country, in fact of the world, based upon present conditions will be utterly valueless. If we lose the war, the adjustment which we shall have to make as a result of it baffles our imagination. If the war ends in a draw, the situation is quite as baffling, but not so immediately critical and vital.

While no doubt the war itself will be, as Dr. Elliott pointed out, a supreme test of democracy, it is not that test about which I wish to speak. We not only hope and pray, but we believe that in the end democracy will be triumphant in this war. If you will take down your globe or a map of the world and color that part of the world which was democratic at the beginning of the nineteenth century, and then color a second map to show that part of the world which was democratic on the 1st day of January, 1918, you will be wonderfully surprised; it will visualize the tremendous progress that has been made in the past century in the realization of democratic ideals.

Impulses in the lives of nations and in the life of the world do not begin at a definite point of time, nor do they end on a fixed day. The beginning and the end are shaded and blended into that which came before and that which follows after. The struggle for individual liberty, freedom, equality and fraternity has continued in a more or less definite form

since the dawn of history, and it has made the greatest progress since the time of the reformation. I for one do not believe that the principles of democracy and the ideals for which it stands could have made such progress in a world given over almost wholly to aristocracy and autocracy, had it not contained a real, vital, determinative principle. I do not believe, basing my belief upon the teachings of history, that the regenerative force of that vital, determinative principle can be ended by the military power of the central empires or by any other human invention. It is God given, it is founded upon the eternal principles of right and justice, and therefore I not only hope but believe that it will survive the present war and ultimately triumph throughout the world, not because it is so strong, but because it is right.

The test of which I wish to speak is one which more directly and particularly relates to our national life. In order to approach the question from a common viewpoint, let us consider briefly the beginning of our history. A study of the current literature and state papers for the period immediately preceding and contemporaneous with the making of the constitution of the United States convinces one that the main thing which the makers of that instrument had in mind was to preserve individual liberty and freedom of action. To that end the powers of the federal government were carefully limited, stated in exact and precise language, and there was reserved to the states authority to deal with all problems of local self government. The history of the adoption of the first ten amendments to the constitution of the United States, known as the bill of rights, clearly demonstrates the correctness of this view. The catch phrase of that day was "That people is best governed which is governed least." The individual not only claimed the right to manage his own affairs to suit himself, but a political party was continued in power through many administrations upon a platform which embodied that idea in one form or another? During this period of extreme individualism the preservation of personal liberty was the principal concern, not only of the legislative and administrative, but of the judicial departments of the government as well. These individual rights are comprehended and embodied in the term, the right of free control; this right was most jealously guarded, and any attempt to infringe upon it was challenged at every step.

It is the nature of the limitations placed upon the right of free contract that in a basic sense distinguishes a democratic government from an autocratic government. The Kaiser declares that his will is the supreme will and in effect the law of the land, and that any individual who sets up his own will in opposition to that of the Kaiser is disloyal and unpatriotic. Such a position admits of no personal freedom or freedom of contract, at least in theory, as theoretically the individual citizen enjoys only such liberty and such rights as are allowed to him in the interest of the state, the spirit of which is embodied in the person of the Kaiser. The individual is nothing, the state is everything.

On the contrary, under a constitutional form of government the individual citizen is free to live his life as he pleases, except in so far as it is necessary to restrain his freedom of action in the interest of the general welfare. If in the course of time the state, as represented by an aristocratic governing class, is compelled to yield to the other classes of society more freedom of action, and if at the same time in a constitutional government greater and greater restraints must be imposed upon the freedom of the individual in the interest of the general welfare, autocracy and democracy tend to approach each other in practical results, although they must forever remain totally inconsistent in theory, and it is in this field that the ultimate test of democracy in this country is to come.

By the adoption of a written constitution limiting the power and authority of the central government, leaving to the individual the greatest possible freedom to work out his own ambitions and destiny, with a guaranty of religious freedom and of equal political rights to all, it was thought that the great problem of securing equality to all individuals, was finally solved. The power of amendment was not limited. The exercise of the power was left to the initiative of future citizens. There was to be no limit to individual freedom except that consented to voluntarily. So dominant was this idealistic conception in the life of the nation that oftentimes the government, both state and national, refused to take cognizance of matters which it should have considered. The conscious attempt of the fathers to escape from the bureaucratic methods of aristocratic European governments and the intense aversion of the American people to the regulation and control of what they considered to be their private

affairs was so strong that in the early history of this country the government was seldom called upon to consider legislation impairing the individual's right of free contract. The government having refused to recognize the inequalities which in fact existed among its citizens although they were theoretically equal, it was perfectly natural that combinations of citizens similarly situated should be formed for the purpose of protecting their own peculiar interests. The necessity for this sort of combination was not great as long as we had great unsettled areas of arable land subject to homestead entry, great mines unopened, great forests untouched. But as the population grew denser and as we became more and more a manufacturing and commercial nation, the tendency to form combinations of one kind or another rapidly grew stronger.

The combinations, whether of capitalists, laboring men, farmers, merchants, manufacturers or what not, rest fundamentally upon this proposition: The members of the combination voluntarily surrender to the organization formed by them certain individual rights which they possess, and to that extent they voluntarily impair their right of free contract. The combinations which have been formed from time to time have been effective exactly in proportion to the degree in which the members have surrendered to the combination their individual rights. The most common illustration of this is the labor union. A labor union in which the members have given to the combination the right to bargain for them in respect to wages, hours of service, conditions under which service is to be performed, and which abides by and supports the constituted authorities of the union, is strong and powerful. On the other hand, where the governing body has only a limited authority and can do little more than recommend and is not empowered to represent its members, it is weak and inefficient. The same thing is true of combinations of capital. The so-called trust or other combination is strong and powerful in proportion as the members have surrendered control of their private affairs to the organization. Where the surrender is complete and the control absolute the power for good or evil is very great. Where there is not a complete surrender and each member endeavors to retain and exercise for himself his individual rights—in other words, declines to permit his right of free contract to be limited—and



simply permits himself to be advised and not to be controlled, the organization is inefficient and as a rule not long lived.

This is illustrated in the history of many combinations that have been formed among farmers. The idea of individual liberty and freedom still prevails much more strongly with farmers than it does with many other classes of our citizens. They realize the necessity of unity of action, but they cannot bring themselves to a point where they will readily give up the control of their private affairs to the organization, even though it be their own. There are not wanting, however, many signs that our farmers are being prepared in the stern school of experience to accept the benefits of such organizations and to make the necessary sacrifices of their individual freedom and rights to make such organizations effective.

The proposition which I wish to make is this, that by the formation of combinations and groups in all lines of activity our people have gradually grown accustomed to the idea of a surrender of individual liberty and have shown a willingness to have their right of free contract limited and controlled in the common interest of the members of the organization. It is true that the immediate object of these combinations has been to benefit the members of the combination.

The present world tendency toward complete organization of states, centralization of power, and governmental activity along all lines, cannot fail to affect our government both state and national. By the formation of groups for the social and economic gain of members, our people have grown accustomed to the idea that their welfare may be promoted by giving up or surrendering some of their individual rights, and during the last two decades we have had a great number of laws passed which aim directly to protect certain classes of citizens in the interest of the general welfare. There seems to be every indication that the movement to limit the individual freedom of the citizen in the interest of the general welfare will be greatly accelerated in the near future.

Many problems of the most far reaching and vital character will be presented to us for solution, not only in the light of our experience, but in the light of the dawn of a new era in the history of the human race. In the meeting of these problems and in the manner in which they are solved democracy will be tested. It will be a test which will determine not only

its relative efficiency, but its right to live at all. Will these problems be met and solved in the interest of the whole people to the end that equality in the enjoyment of life, liberty and the pursuit of happiness may be made real in the life of the nation? In the solution of these problems will we meet them as a people, considering only our own immediate personal interests, or the interests of a particular business, profession or group to which we may belong, or will we consider the interests of our country as a whole, its future prosperity and the happiness of the whole people? By reason of the war we must in settling these questions consider matters with reference to our international relations. It is a vast, almost untouched field; it calls for the highest abilities and the most profound patriotism.

We may state without considering some of these problems: Much is said today about the conflict between labor and capital. It is often said that the reason this conflict exists is that compared with one hundred years ago labor and capital have grown apart. At that time the master worked with his employees; their families were on a basis of social equality; they understood and sympathized with each other's problems, and there was a community of interest which extended not only to their social relations, but to the business in which they were all engaged.

If two objects at some time in the past were together and they are now separated, it is perfectly clear that one or the other or both of these objects must have been moved. If in the past labor and capital were united in a social and economic sense and had a common interest, and they are now separated, either labor or capital or both must have shifted from their former position.

If we examine the problems which confront the laboring man of today we shall find that they are not unlike those which confronted his father and his grandfather. His enjoyment of the material things of life is limited by the amount of the wage he receives. He need not be without hope for his children, but for himself he can look forward only to a life of continued, unremitting toil. Speaking by and large the lot of the employer is far different. He has a wider horizon, he is able to obtain and enjoy much more of the material comforts of life; he may amass a competence not only for himself, but for his children, and the outlook of the

average employer is vastly different from that of the average workingman. It must be admitted that if the laborer and the employer have become separated, the separation is due to the social and economic change in the position of the employer; in other words, capital and not labor has moved away from its original position. Therefore if they are ever to be brought together and to become again a social and economic unit as they were in the past, one or the other must move from his present position, and upon that one which has the greater freedom of action, the wider horizon and the greater ability, rests the greater burden in this matter.

The farmer more and more feels himself a laborer and less and less a capitalist or independent operator. He does not look at his theoretical situation, which is that of an independent land owning citizen, but he looks rather at his social and economic limitations. And there are present now, as there have been at many other times in the past, symptoms of a great unrest in the heart of our farming population.

If we are to remain a real democracy, administering the affairs of the government in the interest of the whole people, these questions must be met and solved in a spirit of justice and fairness and mutual forbearance. The burden of making this adjustment and preserving our democracy rests primarily and mainly upon those who conduct the professional, industrial and commercial affairs of this country. They have to some extent lost step with the laboring man and the farmer, and it is up to them to get in step. What the great mass of people who have been less fortunate in life than their neighbors in a financial sense most desire is not more money, but more human sympathy, more social recognition; they wish to be made a part of the affairs and the life of the community; they want to have a voice, not theoretically, but actually, in the government of which they are a part. If these questions are not met fairly, openmindedly, and solved by the application of correct principles, there can be no doubt that there will come in the near future great social upheavals. If history teaches us anything it teaches us that fundamental social tendencies cannot be stopped or long obstructed; they can be guided and controlled, but, like the action of the glacier, they are slow, sure, certain and irresistible.

I have no fear of our democratic institutions being impaired by the action of our representatives either in the white house

or in congress, or by our navy or by our army. If our institutions become less democratic and more autocratic, it will be by reason of the fact that the people of this country who labor with their hands are convinced that practical and theoretical democracy are not one and the same thing and that in order to attain social justice the state must intervene, limit the right of certain classes of society in the interest of the whole; and here lies the danger. There should be no obstruction, there should be the greatest freedom of consideration of these problems, not only in the light of past experience, but with a view to adapting our institutions to a greatly changed future. If anyone doubts that the people who labor with their hands are to have more and more to say in regard to their respective governments he must be wilfully blind. If these currents are obstructed and dammed up they will break out in some direction with tremendous fury, with a resulting loss to society as a whole.

Due to the unusual and heavy taxation which must follow this war over a long period of years, one of the questions which will press for solution is that relating to the distribution of wealth. No man or woman, now or in the future, ought to seek to evade his just and fair proportion of that burden, and any man who now or hereafter schemes to evade his just share of taxes, to cast the burden which he should honestly bear upon the shoulders of another, plots not only against the life of the republic, but strikes a blow at the heart of democracy itself.

There are now and there will be greater demands for the removal of constitutional limitations. Even a superficial study of the reasons which are given for the removal of these limitations must convince anyone that the purpose and object of these limitations is to make easier further limitations upon the right of free contract. The danger is that in attempting to secure what ought in fairness to be given, the boundary line which separates democracy from autocracy will be passed, that individual initiative will be destroyed, that the incentive to effort will be diminished, and, worst of all, that democracy will have been proven fatally defective.

Much is said today about our army being the melting pot. Men descended from every race under the sun are today fighting under the Stars and Stripes; they are coming to understand each other and to know more of each other's aims

and purposes. With this increased knowledge there will come increasing respect and mutual confidence, and no doubt the training camp is a great force for the Americanization of the divergent elements in our population.

How effective this Americanization will be after the close of the war will depend more upon our women than upon our men. These men may train together in the cantonment, fight together in the trenches, return to our shores with hearts full of fraternal feeling, but when they are back will Mrs. John Albert Smyth call upon Mrs. O'Grady and will Mrs. O'Grady give social recognition to her neighbor from Sicily, and will the wife of the banker call upon the wife of the candle-stick maker, or will society continue to preserve all the artificial distinctions and social traditions which it had before the war?

If the patriotic women of this country desire to render a genuine service to democracy, let them commence the reformation in their own homes, for here are the roots of all those invidious class distinctions which are so inimical to real democracy. Not long since a woman of an aristocratic family who had moved about in a limited circle abandoned her social life and became a real worker in the Red Cross Society. Here for the first time she was thrown into contact with women from all walks of life. She was greatly surprised to learn that those women had the same feelings and sentiments, the same affections, ambitions and desires, that the women of her own class had. She expressed her attitude toward democracy and the attitude of her class when she said "I did not know until now that there were so many nice persons in the world." Her sentiment was not expressed in a snobbish way, but was indicative of a snobbish attitude toward life in general. Some day the place of every person in society will be determined not by what they have but by the amount of their contribution to the general welfare. If they make no contribution they will have no place. When that day comes, the women who rear families, keep the homes and do the commonplace work of the world will be recognized for what they are, the very foundation rock upon which democratic society rests. The spirit in which the women of this country should meet this problem is illustrated by the experience of another friend of mine. She had for some time been doing settlement work in the Italian quarter in the city in which she resides. She was sincere and earnest and in love with her work and am-

bitious to make it successful and had a real desire to be of service. After she had been for some time engaged in this work she was in the home of one Italian family when the mother said to her: "Isn't it curious you know all about my house and every cupboard and closet in it and I do not know a thing about yours!" The scales fell from this woman's eyes and for the first time she saw clearly her relationship to the problem in hand; and in less than ten days and many times since then the mothers from the Italian quarter with their children have been invited to and received in her own home and in the homes of her friends. That is what I call playing the game; and it will do more to bring about the Americanization of our people than will the training of our men in our camps and their association upon the field of battle, although that will do much. In this field the calling card and what it stands for will be a more powerful force than the ballot. No society ever has existed or will exist where every person is the social equal of every other person; but there is no reason why we cannot understand and sympathize with the problems of our neighbors and look at things from their viewpoint in an effort to reach mutual understanding.

What we most need in this hour of national peril is not more laws, more amendments to the constitution of the nation or any state, but a change in our ideals. As a people we must get together, understand each other and each other's problems, in a genuine spirit of friendship and fraternity. A change in our social ideals, in the standards by which we measure the attainments of our citizens, will do more to preserve democracy as we understand it than can be done in any other way. Americanization as I understand it simply means getting acquainted with your neighbors; spending more time upon other people's problems and less upon your own; rendering that service which is due from every individual, male or female, who enjoys the benefits of a free government, to the end that democracy may be preserved. If changes in our laws are necessary we should brush aside every consideration of political or part advantage and we should lend our aid to the end that any necessary changes in our laws may be achieved without violent shock to the body politic and with the final result that complete social as well as legal justice shall be done.

Upon the lawyers of America rests a great and immediate

responsibility; they must become real leaders and aid the people in giving practical expression to their spiritual aspirations. The people of this country are more idealistic than is generally supposed, and their ideals are inherently sound. Never since the beginning of time have lawyers had a greater opportunity than the lawyers of this country now have. As a profession we must face the future with an open mind and help to solve the problems of the future in the light of the experience of the past. It is the duty of those of us who are not permitted to go to the front to see that that for which our fellows are fighting is not lost. The bar of this country has made a generous response. We find lawyers in every field of patriotic activity; they have closed their offices, left their business and their families, and we have every reason to be proud of our profession.

The battle for liberty, justice, equality and fraternity has been a long one. If we win this war wholly and completely, it will not be finished. Another step toward the goal will have been taken—a long, the longest that has ever been taken in a single epoch. It is our duty as lawyers to see that the benefits of this great struggle for democracy are preserved for the future generations. The duties and responsibilities which rest upon us are as urgent and important as those which rested upon the lawyers of the revolutionary period. While thousands and hundreds of thousands are giving their lives, in comparison with these we shall give very little if we give all we can of our means, our time and our abilities and of everything that we possess.

America cannot, must not fail in this crisis. Providence has set America apart and made her the trustee of democracy. Fifteen hundred years elapsed after the birth of our Blessed Lord before the cross was brought to the shores of America and planted on a new continent which was free from the traditions and limitations of the old world. With the cross were planted the seeds of democracy, and liberty loving people of all nations found here a new home. The English, Dutch, French, Germans and Scandinavians who came to our shores brought with them a love of liberty; it has ever since been and now is the dominant factor in our national life. The success of the revolution made it possible for the hope of the world to be realized in a government which was based upon the consent of the governed. By the formation of our govern-

ment, America became the embodiment of the ideals of all the people of the earth who believe in civil and religious liberty. Having accepted the trust from Heaven itself, we must and we shall be true to it. As our Great President has said, we will fight to the last man and the last dollar in the defense of our liberties. If we permit this government of the people, by the people and for the people to perish from the earth we shall be unworthy stewards. The issue is made up, the hour of decision is here, the fate of democracy hangs in the balance. But democracy will pass this supreme test and we shall preserve it and hand it down to our children as we received it from our fathers, fitted and adapted to another time and a new era. We will prove true as did our fathers; we will succeed because God is on our side,—the God of truth, justice, mercy and love.



ADDRESS BY ALBERT M. KALES  
OF THE CHICAGO BAR,  
THE POPULAR ELECTION OF JUDGES.

DELIVERED JUNE 27, 1918.

It is important at the outset to distinguish between the selection and the retirement of judges.

When a judge dies, resigns from office or declines to run to succeed himself, there is a vacancy and the question is properly one of selection only. A new man must be chosen. The question of retiring a sitting judge does not exist. When, however, a sitting judge runs to succeed himself, the first and principal question is: Shall he be retired from office? This is not theoretically the first question. Theoretically, he is like any other candidate running to fill an office which is vacant. Practically and actually, however, we know the first question in such cases is: Shall the sitting judge be continued in office or retired? Regardless of politics, regardless of the great legal attainments of his opponent, is it wise to retire a sitting judge who has gained experience and efficiency in the performance of his duties and given satisfaction? In actual practice where a sitting judge is running to succeed himself, the election is primarily and principally a recall election.

In this address I shall first speak of the methods of selection, and afterwards (very briefly) the methods of retiring judges.

I.

METHODS OF SELECTING JUDGES.

Where the so-called popular election of judges prevails, judges are not in fact selected by the electorate; they are appointed.

There is no such thing as the selection of judges by popular election. It is impossible in an electorate of any size and a society of any complexity for the voters collectively to register their will in selecting the lawyer among them whom they desire to act as judge.

Knowledge of the fitness of individuals to perform the



**ALBERT M. KALES.**



difficult functions of the office of judge must be known before anything like selection is possible.

How can an electorate of any size have any sufficient knowledge upon which to make a selection from among any considerable body of lawyers to fill judgeships?

It is obviously impossible for an electorate of any size to have any collective idea of those among the lawyers whom it wishes to act as judges. It is even more clear that the electorate can have no collective idea of the qualifications of different lawyers for exercising the judicial function. It would be a problem for a single individual who had an extensive knowledge of lawyers and who observed them closely for a considerable period in the practice of their profession.

We are past thinking that any lawyer can be a judge. In metropolitan districts particularly, we have come to the view that to be a successful and efficient judge requires a highly trained professional expert. The electorate would not think of undertaking to select at a general election the engineer who is to design a bridge upon which thousands of the population each day must pass in safety. It is quite as absurd for an electorate to attempt a selection of the very special talents which are required in a judge in passing upon the rights to life, liberty and property of thousands of citizens.

Furthermore, lawyers who are willing to become candidates for a judgeship have, as a general rule, no real popular following of any considerable size in an electorate. Even judges after they have been on the bench have no such popular following that they can be said to be a popular choice. The position of a single judge in a district containing 100,000 voters and upwards is ordinarily too inconspicuous to enable any man who is willing to occupy the place to secure a popular following. A lawyer or a judge who secures a hold upon the majority of a numerous electorate will inevitably be led to a candidacy for offices of greater political importance than a judgeship.

What happens when the electorate has placed upon it the impossible task of selecting judges is that some sort of informal *de facto* method of appointment arises.

For instance, in Wisconsin I am informed that you have developed a *de facto* method of appointment by the lawyers and the Governor. Mr. Harley, the secretary of the American

Judicature Society, investigated the matter a number of years ago and has given me the following result of his observations :

A strong tradition has been built up in Wisconsin of re-electing sitting judges. This means, and the actual fact is, that vacancies on the bench occur almost wholly by death or resignation by the incumbent. When this happens the bar (and that means the leaders among the bar) at once set about to fill the office. The qualifications of various lawyers are discussed in a semi-public manner. There is sufficient decorum so that candidates do not come forward personally to advance their claims. A bar primary is then held, all the candidates having a fair chance. The bar, as a whole, accepts the result and regardless of party, supports the winner. The actual power of appointment for the unexpired term rests with the governor. He, however, is expected to, and customarily does in fact, appoint the man recommended by the bar. When election day comes around the judge so appointed is supported by the bar regardless of party, because he was originally the nominee of the bar and because he is a sitting judge. He is regularly thereafter supported at elections until he dies or resigns. So strong is the tradition and feeling in favor of electing and re-electing judges who have been appointed originally in the manner described, that sitting judges will prevail even against candidates who are admittedly abler lawyers. The system of retaining judges in office during good behavior has been found by the people of Wisconsin to be worth more than the replacement once in a while of a satisfactory man with one who might and who probably would do better.

Whatever pride there may be in such a system of selecting judges, it is a pride in the way the so-called plan of popular election has been developed into an appointment by the leading lawyers of the district, with the concurrence of the governor.

On the other hand, in Chicago, where there is a typical long ballot and the parties are well organized and powerful, the appointing power is lodged with the leaders of the party organization. These men appoint the nominees. They did it openly and with a certain degree of responsibility, under the convention system. They did it now less openly and with less responsibility under the compulsory and partisan primary system. If one wishes to test the soundness of these

conclusions let him inquire his way to a judgeship in such a district or listen to the experiences of the men who have found their way to a judgeship or have tried to obtain the office and failed. In almost every case the story is one of preliminary service to the organization, recognition by the local organization chief and through him recognition and appointment of a nomination by the governing board of the party organization. Those who do not go by this road do not get in. The voter only selects which of two or three appointing powers he prefers. Whichever way he votes he merely approves an appointment by party organization leaders.

In New York state the judges have a fourteen-year term. In parts of the state outside of New York City they are usually re-elected, which means practically a life tenure. When a vacancy occurs, the leading political leader or leaders of the dominant party in that district of the state meet for the purpose of determining who shall be nominated. The result is in fact an appointment by political party leaders subject to confirmation by the electorate.

How do these *de facto* methods of appointment work? Sometimes well, sometimes ill. When they work well, it is supposed that the system of popular election of judges has been vindicated. When they work ill, the popular election of judges is supposed to have broken down. Neither statement is correct. In both cases alike, a *de facto* method of appointment has worked well or ill, as the case may be.

I even remember one instance where the Chicago method of *de facto* appointment by political party leaders worked out extremely well. It was when the Chicago Municipal Court Act became effective. Here was a case of selection to fill vacancies. There were no incumbents in office and therefore no question of retirement. There was great popular interest in the new experiment. The Republican party political leaders were in power in the City of Chicago where the new judges were to be elected. They appointed a sub-committee to select the best material available. The chairman of this sub-committee was himself a prominent lawyer. The leaders of the bar were consulted. A list of names was made up regardless of whether the men would accept or not. The chairman of the committee sought out the candidates suggested. In some cases he even visited them at their offices and labored with those who did not want the place, insisting to them that

it was a public duty which they should perform if possible, and in some instances men who would not and did not think of seeking the place took the nomination. In that way a splendid list of candidates was nominated and elected. That was the first and last time within my knowledge that anything of the sort has ever happened in Chicago or Cook County.

Now, what are the objections to these *de facto* methods of appointing judges which spring up under the so-called elective system?

The theoretical objections are obvious. Theoretically, the proper appointing power is one which is legal, conspicuous, subject directly to the electorate, and in a great degree interested in and responsible for the due administration of justice by the courts to which the judges are appointed.

The *de facto* appointing powers which arise under the so-called elective system frequently violate every one of these requirements. The appointment by political party leaders is not legal. It is extra-legal—that is, it was not contemplated by those who designed and advocated the elective system. It is not sanctioned by any law or by the constitution. The appointing power in the party organization leaders is not conspicuous. On the contrary it is very obscure—so much so that many voters will be found who still believe that the application of the elective principle to the selection of judges means a choice by the people. The party organization leaders wielding the appointing power have no responsibility for the due administration of justice. They have the minimum degree of interest in it. Sometimes ugly hints get abroad that particular party leaders are actually interested in securing as judges men who may be relied upon to give special immunity to certain offenders against the criminal law. The motive is very strong on the part of the organization chiefs to reward with an appointment to the bench those who have done more in the way of political service to the organization than in practice in the courts. Finally, the appointing power in the party organization leaders is not as directly subject to the electorate as it should be.

The practical objections to the *de facto* methods of selection which arise under the elective system vary. They are obvious enough when the political party leaders appoint as a reward for political service rather than for attainments as lawyers

practising in the courts. Even, however, if the *de facto* method of appointment works well, (as I believe it is said to do in Wisconsin and in parts of New York state outside of the City of New York,) there is still a practical objection to it. The method is too unstable. In a few years with a change in the population or with a change in political ideas, often the result of sudden growth, the old order, the old habit is completely upset. The former custom is no longer respected. New political forces start to fill all offices for which the electorate may select candidates. Your excellent method of appointment by the Governor of a new judge to fill an unexpired term (with the advice and consent of the local bar), and the subsequent election and re-election of the appointee is rudely broken in upon. Soon you find that new political forces grasping after political power have developed a new *de facto* method of appointment in which the Governor and the lawyers have little, if any, part.

When one is confronted with the question of the best method of selecting judges there is only one course to take and that is to consider the best method of appointment.

I confess that the various *de facto* methods that spring up under the elective system are the least satisfactory.

When the elective system results in appointment by party political leaders as a reward for purely political services, it is at its worst. I have often thought that it would be greatly improved if the power of appointment were openly conferred upon the executive Committee of the County Central Committee representing the party most generally successful in the last preceding election. Such an appointing power would at least be legal and conspicuous and would place a certain degree of public responsibility upon those exercising the appointing power.

Even the excellent Wisconsin *de facto* method of appointment is objectionable because of its instability.

Appointment by the Governor, as in Massachusetts, is an improvement over the usual *de facto* method of appointment developing under the elective system. It does not follow, however, that appointments by the Governor will work satisfactorily. The Governor's responsibility for and interest in the due administration of justice is often times remote. Justice by the courts is administered by a department of government separate and independent of the execu-



tive. Many state executives are busy building and keeping in repair the Governor's political organization, which is sometimes separate from various local political organizations controlling the name of the party to which the Governor ostensibly belongs. The maintaining of the Governor's political organization is done by appointments to office and it is to be expected that appointment to judgeships would in many instances be used as freely as appointments of heads of the state insane asylum and the penitentiary. Furthermore, our state executives have legislative programs and are likely to trade appointments for support in the legislature at a critical moment.

I confess to a liking for the principal of appointment applied in the British constitution.

We have received our language from England. We have received our laws from England. I have even heard orators speak enthusiastically about something so anciently English as Magna Charta. In the nineteenth century we have joined England in forwarding the social principle of individualism. In the twentieth Century we shall, no doubt, join with England in modifying the practice of that principle and reorganizing on the lines of greater collectivism. We are and for nearly a century have been in accord with England in supporting the same ideals of international morality, justice and peace. This war has revealed to us that the paths of England, its great self-governing colonies and ourselves lies side by side.

What is it then that has caused us to be blind to the splendid examples of political and governmental genius which have appeared in England in the latter part of the eighteenth century and developed throughout the nineteenth? Why, for instance, when the rest of the world has reached out for it, have we been blind to the development of that wonderful instrument of democratic representative government—the cabinet or parliamentary system—in which the executive and legislative power are for the moment united, but where the executive power is subject to the legislature and the legislature is subject to the people. Has it ever occurred to you that this great constitutional expedient of democracy has been copied the world over? The self-governing British colonies of Canada, Australia and South Africa have it. The French republic adopted it. Have you forgotten that little Piedmont used the principle in its constitution and under Cavour learned to

use it so successfully that when it became the political leader of Italy the adoption of the cabinet system was carried into the constitution of United Italy? Even in Austria and the Balkans, there are traces of its existence. The Russians grasped at it. The Japanese in the far east use it. In all the world the two conspicuous examples of nations which would have none of it are the United States and Germany. Bismarck refused it because it was the device of democratic as opposed to autocratic rule. We passed it by because it was British,—because it developed and came to perfection subsequent to the time when the minds of the people of this country and the minds of succeeding generations had been poisoned with a prejudice against all things British.

It is my guess that this prejudice has been kept alive because the youth in our schools have been taught generation after generation that the principal events in the history of England since 1776 have been the battles of Lexington and Bunker Hill, Saratoga and Yorktown, the burning of Washington and the Battle of New Orleans, "54-40 or Fight", the Mason and Sidell incident and the Venezuela boundary dispute. While this course of education has been going on here, the modern British view of the American Revolution has come to be that George Washington was a typical liberty-loving English gentleman, doing his duty as an Englishman in rebelling against a despotic, and tyrannical German king. In view of the events of the present we should see to it that the youth of America is taught the wonderful history of the achievements of England in the nineteenth century, especially in the art of constitutional democratic government and political institutions as well as her heroic action in entering the war when Belgium was invaded, and the glory of her arms on many battle fronts in this stupendous world war—to the end that the door may be opened once again to us to consider the merits of English institutions as models upon which to found and enjoy the benefits of liberty and democracy, and that the political scientist who is considering the best method of appointing judges may not have to hide the fact that he has adopted a principle theoretically correct and worked out practically in the British constitution.

The method of appointing judges in England is not very well understood. In my experience it is difficult to find it stated anywhere in books. I secured my information directly

from Lord Bryce. The appointment of all English judges, except the judges of the Court of Appeal, is in the hands of the Lord Chancellor. The appointment of the judges of the Court of Appeal is made by the Lord Chancellor and the Prime Minister jointly. Now, who is the Lord Chancellor? He is a member of the government in power. He goes in and out as the government in power goes in and out. In other words, he is (like the cabinet) directly subject to the majority of the House of Commons and indirectly to the electorate. So is the Prime Minister. In other words, they have in England landed the appointing power of judges in the hands of an officer who is subject to the House of Commons and to the electorate. The same principle would be applied in this country if we elected a chief justice for the state for a term and gave him the power to fill vacancies among the judges.

In giving the power of appointment to the Lord Chancellor the British have given it to the head of the judicial system. Especially under the modern English judicature acts the Lord Chancellor is the administrative head of the entire system of courts. He, as the head of the judicial council having in its hands the rule-making power, is responsible for the due administration of justice to the government and to the people. This responsibility has made him interested in a higher degree than ever before in the due administration of justice. We should be using the same principle if the elected chief justice for the state who had the power to fill vacancies among the judges was the head of a judicial council of judges for the state, entrusted with large powers to make rules and regulations for the sittings and handling of business by the judges, the specialization of effort among the judges, and the power to make rules of practice and procedure. Such a chief justice would be responsible for, and therefore interested in, the due administration of justice in the same way and to the same degree that the British Lord Chancellor is. That is the sort of a state officer in whom to vest the power of appointing judges. That is the sort of an appointing power which we should endeavor to develop when we begin our constitution-making over again.

Curiously enough, such a method of selecting judges exists to a limited degree at this day in the State of New Jersey. The New Jersey Chancery Court consists of a chancellor and seven vice-chancellors. The chancellor is appointed by the

Governor with the consent of the Senate and holds office for seven years. The Chancellor appoints the vice-chancellors, each for a seven-year term. The satisfaction given by the New Jersey chancery court is testified to by New Jersey lawyers. The high quality of work done by the vice-chancellors is indicated by the fact that their opinions are included in the state reports and, in my experience, are not infrequently cited by lawyers as if they were opinions of a court of last resort.

## II.

### RETIREMENT OF JUDGES.

The machinery of the British constitution for retiring judges is as little, or even less, understood than the British method of selecting judges. English judges are subject to be removed not only by impeachment but by the mere address of both Houses of Parliament. Such an address may be made upon the mere majority vote of each house. No trial is required and no cause for removal need be shown. This placed every English judge at the mercy of the ministers in power, at least so far as the vote of the House of Commons is concerned. Since the Lord Chancellor is a member of the cabinet in power he has a very real disciplinary authority over every English judge, for the Lord Chancellor is in a position to bring the conduct of any judge before the cabinet and to force a vote in the Commons to recall the judge. This is the English equivalent for the popular recall of judges. It is a recall initiated by the representatives of the electorate subject to the veto of the House of Lords.

Massachusetts has had for many years a constitutional provision providing for the retirement of any judge by the governor, upon an address of both houses of the legislature.

Where the so-called election of judges at regular intervals prevails, and where party organizations are strong and subject to a few leaders, we have developed naturally enough a system of recall by the extra-legal appointing power, namely, the party organization leaders. In theory the periodical election of judges is supposed to afford an outraged people a chance to cast from the bench a person unworthy to administer judicial power. What in fact happens is this: Our judges are not subject to a recall merely, but to a progressive series of recalls.

They are subject to recall by the party organization leaders, who may refuse a nomination at the time of an election. Instances are not wanting where this has been done. If the judge secures the nomination he may be recalled by a wing of the organization knifing him at the polls. He may be, and frequently is, recalled by reason of an upheaval upon national issues which has nothing to do with his exercise of judicial powers. In the case so rare that it is difficult for lawyers with a considerable experience at the bar to remember it, a judge is actually recalled because of popular dissatisfaction with him. In a word, in order to give the people a chance on a special occasion to recall a judge because he is undesirable, we have exposed the judge to recalls from the most objectionable sources, and made his tenure dependent upon conditions which have nothing whatever to do with his qualifications as a judge.

The operation of the elective system in subjecting judges to a recall by the extra-legal appointing power is one of its most vicious features. If judges must submit to popular control and to retirement by a popular vote without any cause being shown and without any chance to be heard, it should be provided for in the manner which effects that object, and that alone. There is one way to do this. Separate selection of judges from their retirement by popular vote. Provide for the submission of the judge's name at fixed periods to the electorate with a single question on the ballot; "Shall the judge be continued in office?" If he is retired by a majority vote, fill the vacancy by whatever appointing power may be selected. Above all things, do not mix the question of retirement with the question of selection by attempting to settle both in a single election. If you do, then whatever *de facto* appointing power you may develop by reason of the attempt to select judges by popular vote will tend to become a power to recall or retire the judge also.

#### CONCLUSION.

It has been my object in this address to contribute the following ideas to your political thinking:

1. Separate in your thinking and planning the business of selecting judges from the business of their retirement.
2. Make up your mind that there is practically no such

thing as the selection of judges by the electorate; that all forms of selection by the electorate result in a *de facto* method of appointment—some of which may be satisfactory and some unsatisfactory,—but all always unstable and transitory.

3. There is only one question in determining which method of selecting judges should be adopted. That question is: What method of appointment is preferred?

4. I bespeak your consideration of the principle worked out and applied in the British constitution and in the constitutions of Great Britain's self-governing colonies, namely, appointment by legally constituted authority, answerable to the electorate, conspicuous and highly responsible for and interested in the due administration of justice.

5. The practical capacity of the electorate to retire a judge from office because the majority simply do not like him must be conceded. Whether that is a wise function to give to the electorate or not, I have not considered or discussed in this address. If it is to be conferred upon the electorate do not complicate it with the matter of selection. Let the voter at stated intervals register merely his yes or no to the question: "Shall the judge be continued in office"? If the judgeship becomes vacant, let the place be filled by whatever appointing power you select.

ADDRESS BY W. A. HAYES.  
ON THE SUBJECT  
THE PURPOSES, HISTORY AND PRESENT PRO-  
GRAM OF THE AMERICAN BAR  
ASSOCIATION.

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DELIVERED JUNE 27, 1918.

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PURPOSES.

The purposes of the American Bar Association are set forth in Article I. of its Constitution and are five in number. First, to advance the science of jurisprudence. Second, to promote the administration of justice. Third, to promote uniformity of legislation throughout the Union. Fourth, to uphold the honor of the profession of the law, and fifth, to encourage cordial intercourse among the members of the American bar.

Thus were the objects and purposes of the Association defined in the Constitution as originally adopted, and thus they have remained. A careful examination of the work of the Association will convince any impartial mind that it has consistently adhered to these purposes throughout its existence of forty years.

The scope of this paper precludes a reference to many interesting facts, but a word as to how the Association has endeavored to accomplish these purposes may be appropriate. The science of jurisprudence has been steadily advanced by addresses delivered at the annual meetings, by the work of the committee on jurisprudence and law reform, on legal education and admission to the bar, and the comparative law bureau.

Many members of the bar and not a few judges are strangers to the science of jurisprudence, yet a reasonable familiarity with it is indispensable to the due administration of justice. The true jurist is versed in the history of the law and in its philosophy. He comprehends society and its need of law. He grasps the great principles which control society, and finds in the law the expression of those principles. He is a designer and an architect of the law, as well

as an administrator; seeking enlightenment in its history, justice for the individual, and freedom for society in its present provisions, and ever preserving to it that quality of growth which renders it suited to future conditions.

Twenty-five years ago an eminent member of the bar, in addressing the Association, said: "It is plain that something must be done sooner or later to reduce our chaotic jurisprudence to something like form and order, and the needs of society require that the work should not be delayed." The statement is more apt today. The science of jurisprudence should be advanced and it should at all times be kept advancing. Its advance calls for the organized efforts of the bar. It is necessary by repeated exhortations to stir the profession to a realization of the practical value of jurisprudence, and these exhortations are found in the many excellent addresses delivered at the meetings of the Association. They constitute a notable library of legal literature which ought to be frequently consulted by every ambitious and public-spirited lawyer. Among such addresses are: "John Marshall," by Edward J. Phelps, 1879; "The Relationship of Law and National Spirit," by George A. Mercer, 1879; "American Institutions and Laws," by John F. Dillon, 1884; "The Opportunity for the Development of Jurisprudence in the United States," by John T. Platt, 1886; "Codification," by George Hoadley, 1888; "Jurisprudence Considered as a Branch of the Social Science," by James M. Woolworth, 1888; "The Ideal and the Actual in the Law," by James C. Carter, 1890; "The Evolution of Jurisprudence," by W. W. McFarland, 1893; "Law and Reasonableness," by Le Baron B. Colt, 1903; "The Jurisprudence of Lawlessness," by Thomas J. Kernan, 1906; "The Influence of National Character and Historical Environment on the Development of the Common Law," by James Bryce, British Ambassador, 1907; and "The Law and the Community," by Woodrow Wilson, 1910.

The committee on jurisprudence and law reform was the first of the original committees, and it has done much excellent work in advancing the science of jurisprudence. The value of the committee's work, like the value of the addresses mentioned, is not to be judged by the immediate effect upon the few lawyers assembled at the annual meetings. The committee reports reach the law schools, the law magazines,



law thinkers, writers and lecturers. Silently they seep through the thought of the profession, and tend to bring it to higher and more healthful levels.

The work of the committee on legal education has done much to advance the science of jurisprudence. It has exercised a most profound and far-reaching influence upon the law schools of the country. When the Association was founded law schools had not acquired the standing and the dignity which they possess today. The old mode of reaching the bar by a course in a law office was still very general, while many of those who thus sought admission had little general education and consequently were badly equipped to serve either as counsellors or otherwise. These conditions were very ably dealt with in an address delivered before the section on legal education by Woodrow Wilson in 1894. Among other things he said:

"No man among us is so blind as not to see that the law limps sadly at many points. \* \* \* We need laymen who understand the necessity for law and the right uses of it too well to be unduly impatient of its restraints; and lawyers who understand the necessity for reform and the safe means of effecting it too well to be unreasonably shy of assisting it. The worst enemy to the law is the man who knows only its technical details and neglects its generative principles. \* \* \*

We need lawyers now, if ever, who have drunk deeper at the fountains of the law, much deeper, than the merely technical lawyer, who is only an expert in an intricate and formal business; lawyers, who have explored the sources as well as tapped the streams of the law, and who can stand in court as advisers as well as pleaders, able to suggest the missing principles and assist at the adaptation of remedies. Such men, we shall get when we recognize law as a university study. \* \* \*

Our concern is with the lawyer, and it is certainly he more than any other who needs to be versed in the philosophy and the history of the law. \* \* \*

The man who teaches law to undergraduates should be a political scientist. \* \* \*

Such studies, besides being in themselves a liberal education, really save time. It saves time to become more than a lawyer and be a jurist. \* \* \*

A technicality is difficult only so long as it is

unexplained and has to be kept sticking to the memory of external and artificial pressure. So soon as you explain it you bring out its adhesive quality and it will not leave you so long as you continue to understand it. There's no glue like comprehension."

The Comparative Law Bureau was established as an auxiliary of the Association in 1907. Its aim was thus stated:

"Its objects shall be the presentation and discussion of methods whereby important laws of foreign nations affecting the science of jurisprudence may be brought to the attention of American lawyers and institutions of learning, and become available in the general study of private law."

The membership consists of members of the Association, state bar associations as such, American law schools, law libraries, institutions of learning and elected individuals not members of the American Bar Association. Bar Associations, schools and institutions of learning are represented by delegates. The Bureau has an intelligent, energetic membership and, under the leadership of Judge Simeon E. Baldwin, who has been its director from the time of its organization, the Bureau has accomplished much in the supervision, editorship and publication of the translations of fundamental foreign laws and modern enactments. Its work has had a decided effect in advancing the science of jurisprudence in the United States.

The Association has done much in pursuit of its second purpose, namely: The promotion of the administration of justice. The establishment of the United States Circuit Court of Appeals; the defeat of legislation for the recall of judges; the formulation of the code of ethics; the preparation and submission of bills for the simplification of procedure, and the elevation of the standards of legal education bear witness to its success.

The Association has accomplished much in pursuit of its third purpose in promoting uniformity of legislation. After the most exhaustive investigations and painstaking labor, it approved and submitted for adoption by the legislatures of the several states uniform acts upon the following subjects: Negotiable instruments, warehouse receipts, sales, stock transfers, bills of lading, foreign wills, divorce, family desertion, marriage, child labor, and pure food. The importance of

the Association's work in promoting uniformity of legislation will hardly be appreciated unless we consider the diversity of legislation resulting from recent activity on the part of forty-eight state legislatures. That diversity has led to confusion and has imposed many unreasonable restraints upon the normal development of society. One such result has been an increasing tendency to seek relief through Congressional action. Unless a change is brought about largely through uniformity of state legislation, the states are destined to become mere provinces of an American Empire, rather than independent states of an indestructible Union. The subject should receive the attention of the bench and bar everywhere.

The fourth purpose, to uphold the honor of the profession of law, is most important. That importance will be appreciated only by considering the history of the Bar in the United States. Time will permit but a word. Roughly speaking, it may be said that from the earliest Colonial Times down to 1760 lawyers were in very bad repute in the Colonies. They were rigidly restricted in their activities; regarded with suspicion by society generally, and, in some parts, treated as little better than brigands. About the middle of the Eighteenth Century came a noticeable improvement in their standing. The war, which resulted in British supremacy upon the North American Continent in 1760, was followed by the development of sharp differences between the Colonies and the British Crown. Then it was that the legal profession came to the fore. Then it was that Adams, Jefferson, Jay, Patrick Henry, James Wilson, Rutledge, Benjamin Harrison, Wythe, the Pinckneys and others made their appearance as lawyers. The differences between the Colonies and the Crown were largely legal in their nature, and these men took up the cause of the Colonies with a vigor and an ability seldom equalled and never surpassed. The services thus rendered by lawyers were notable in the highest degree. The legal profession quickly assumed the leadership of society generally, and it continued to enjoy that leadership for a full century thereafter.

The decline of the Bar may be said to date from 1860. The problems which led to the Civil War were largely legal. In their solution, the profession failed. The War was followed by an era of the rapid growth of private corporations and a great expansion in business. Fewer men of large ability

entered the profession, and many of those who did enter forgot the public services due from members of the Bar, and devoted their energies entirely to advancing the cause of their clients. Other reasons perhaps equally potent contributed to the decline.

We now appear to be in the early stages of a change for the better. There has been during the last ten years a noticeable awakening, due in a large measure to the work of the American Bar Association. The training of young men for the Bar is now largely in the law schools. A more liberal education is demanded. Higher ideals are instilled. Duty is clearly defined in the code of ethics, and upon every hand we hear the call to public service. The earnest and powerful exhortations of such leaders in the law as Elihu Root, Ex-President Taft, Judge Simeon E. Baldwin, President Wilson and our own Chief Justice John B. Winslow, have brought lawyers generally to realize that we are at the dawn of a new day. Mr. Root's wonderful address, "The Layman's Criticism of the Lawyer," read before the American Bar Association in Washington in 1914, and his equally notable address, "Public Service by the Bar," delivered at the annual meeting of the Association in 1916, should be read and re-read by every member of the Bar in the United States. They should be studied. Indeed, they should be treated as a testament.

If I were to pick from the one hundred twenty-five thousand lawyers in the United States the one who has been most industrious and most effective in stemming the tide of public sentiment against the profession, in turning it again toward that high measure of public favor which it once possessed, I should unhesitatingly name Elihu Root. Mr. Root has spoken frequently during the past ten years upon the law and the duty of lawyers. A hard working lawyer for nearly fifty years, there can be found no stain upon his record and no suspicion of his integrity. An idealist and a man of affairs, a safe counsellor and a wise statesman, an accomplished scholar, and a profound thinker, he has enlightened every audience that he addressed, and clarified every subject which he discussed. Some think of Mr. Root as learned and ponderous; but note, if you please, with what simplicity and directness he discusses a serious defect in the trial of cases.

"I think there is a broader defect in our trial of

causes, in this, that we are too apt to play a game instead of trying to get down as rapidly as possible to the merits of the case. And we play the game for all it is worth. We enjoy the exercise of skill and the strategy and tactics of litigation. The lawyers on one side or the other of a large part of our litigations consider their duty to be to postpone to the latest time practicable a possible adverse result. So we make our law suits a game of chess where they are not a game of chance. Indeed, it is a most interesting and delightful game, but in the meantime the clients suffer. Unquestionably it would be best for all litigants, taken as a whole, and for the public whom we serve, if every lawyer should address himself with earnestness and sincerity to getting out the true facts of his case and getting the law applied to them as speedily and as simply as possible. Perhaps a sound opinion of the Bar may bring it about."

There is a volume of sound teaching in that brief paragraph.

Let no one think that what is here said of Mr. Wilson as a lawyer is said because he is the present possessor of place and power. It is nearly a quarter of a century since he first addressed the American Bar Association. He was then young and quite unknown, yet the program committee of the Association appears to have considered him capable of instructing lawyers. He again appeared before the Association at Chattanooga in 1910, when he delivered the annual address on "The Lawyer and the Community." That address is replete with sound advice to lawyers and judges. No address ever delivered before the Association more firmly gripped the question of the true relationship of the lawyer to the community. He said:

"The Country must find lawyers of the right sort, and of the old spirit to advise it or it must stumble through a very chaos of blind experiment. It never needed lawyers who are also statesmen more than it needs them now,—needs them in its courts, in its legislatures, in its seats of executive authority."

Indeed, one cannot read the writings of Mr. Wilson upon legal subjects without coming to the conclusion that, had he continued to practice law, he would have developed into a

leader of the American Bar; had he gone upon the bench, he would have made a great judge. He possesses in the full every essential qualification of the great jurist. Since becoming President, he has exercised, both upon the making and upon the administration of the law, an influence which the present generation cannot accurately measure. To the names that I have mentioned might be added many more. The profession has apparently passed the turning point and is again on the way to public favor, and to that old leadership which once justified its pride and bespoke its power.

On the fifth and final purpose of the Association, the encouraging of cordial intercourse among the members of the Bar, I need speak but a word. It is, however, a very important purpose; important to the public as well as to the Bar. There is no respect for opposing opinions equal to that which grows out of the friendly, informal argument. There is no confidence like that born of cordial intercourse. The cordial intercourse contemplated by the Constitution of the Association implies a frank exchange of views on great public questions; on the various provisions of the Constitution; on the law as it is; on the law as it should be; on public law; on private law; on international law, and on all of those things which concern the order and the peace of society generally.

The value of such cordial intercourse was well exemplified at the Annual Meeting of the Association held in Montreal in 1913. There Canadian and American lawyers met and fraternized as never before, and every lawyer from this side of the line has, since then, had a more friendly feeling, not only for the Canadian Bar, but for Canada generally. That attitude was extended toward Britain. Mr. Frank B. Kellogg, now United States Senator from Minnesota, was then President of the Association, and it may be assumed that he was primarily responsible for holding the meeting in Montreal. Certain it is that he alone induced Lord Haldane to cross the ocean and address the Association. It is doubtful if, during his term of office, Mr. Kellogg will find opportunity to render a public service as great as that which he rendered as President of the Association, in holding the Annual Meeting within the Dominion of Canada, and securing for it the favor of an address by the Chancellor of England. "The Higher Nationality" was his theme, a theme

since become prophetic. There was a large attendance, and every American lawyer came away with the thought that the future of his own Country would be best served by a friendly co-operation with the other English speaking nations of the world. We know that the lawyers who listened to that learned address were among the leaders of thought in their respective states, but, however much we may speculate, we shall never know the extent to which they influenced the cause of the Allies as the result of that address.

The affairs of a national organization of more than ten thousand members, and an annual income of nearly seventy thousand dollars requires the constant attention of men of marked administrative ability, and the treatment of this branch of my subject would be incomplete without a few words about two of the "permanent officers" of the Association. I refer to Mr. George Whitelock of Maryland and Mr. Frederick W. Wadhams of New York. Mr. Whitelock was elected secretary in 1909, and Mr. Wadhams, treasurer in 1902, and each year since they have been unanimously re-elected. Each year the President and the Executive Committee rely largely upon them for timely suggestions and wise counsel. They are the ministers of an orderly and efficient administration of the affairs of the Association, and they have had an important part in promoting its growth and influence during recent years. They are tactful, courteous and cultured men of vigor and ability, and well worthy of the confidence reposed in them by the leaders of the American Bar.

### HISTORY.

Emerson says: "Every great reform was once an idea in the mind of a single man." Thus it was of the founding of the American Bar Association, which may truly be said to have been the beginning of a great reform, a reform yet in its early stages, but already productive of far-reaching and beneficent results. The Association was once but an idea—an idea in the mind of Simeon E. Baldwin of Connecticut, lawyer, educator, lecturer, author, judge, governor. Mr. Baldwin has been all these, and in all he has rendered conspicuous public service. He has, however, been something more. He has been a very clear and a very profound thinker, and his clear and profound thinking, which forty years ago

was formulated in the organization of the American Bar Association, will most surely give him rank and fame long after the other public services mentioned shall have been forgotten.

At the meeting of the Connecticut State Bar Association in January, 1878, Mr. Baldwin offered a resolution, "That a committee of three be appointed to consider the propriety of organizing an Association of American lawyers with power to issue a circular upon the subject." The resolution was passed; Mr. Baldwin was made chairman of the committee, which thereupon requested a number of the most eminent lawyers in the country to allow the use of their names to a call for an informal meeting which call was to be sent to representative members of the Bar in the several states. The correspondence was carried on largely, if not entirely, by Mr. Baldwin, and a favorable reply to the committee's request having been received, a "Call for a Meeting to Form an American Bar Association," dated July 1, 1878, was sent out. This call read in part as follows:

"It is proposed to have an informal meeting at Saratoga, N. Y., on Wednesday morning, August 21, 1878, to consider the feasibility and expediency of establishing an American Bar Association. The suggestion came from one of the State Bar Associations, in January, last, and the undersigned have been favorably impressed by it. A body of delegates, representing the profession in all parts of the country, which should meet annually, for a comparison of views and friendly intercourse, might be not only a pleasant thing for those taking part in it, but of great service in helping to assimilate the laws of the different states, in extending the benefit of true reforms and in publishing the failure of unsuccessful experiments in legislation."

And was signed by fourteen of the most eminent lawyers of the country, among whom were: Benjamin H. Bristow, Kentucky; William M. Evarts, New York; George Hoadley and Stanley Matthews, Ohio; Carleton Hunt, Louisiana; Edward J. Phelps, Vermont; Lyman Trumbull, Illinois, and John Randolph Tucker, Virginia.

Such a call could not fail of its purpose. The men whose names were signed to it were a guarantee of success. Some names have been dimmed by the forty succeeding years, but none have been forgotten. To appreciate the force of the



call, we must consider who these men were and what they stood for at the time. The Civil War was then but thirteen years in the past, and great lawyers in the North and the South alike felt that the War itself was largely the result of differences of view in respect to the fundamental law. They felt the need of social intercourse, of communion of ideas, of comparison of theories, of exchange of views. Benjamin H. Bristow had but two years before been a formidable candidate for the Republican nomination for the Presidency; William M. Evarts was then secretary of state in the Hayes' Cabinet; George Hoadley was soon to be Governor of Ohio, and a possible Presidential candidate; Stanley Matthews was later a judge of the Supreme Court of the United States; Edward J. Phelps was later to render eminent services at the Court of St. James; Lyman Trumbull had shortly before completed eighteen years of most eminent service in the United States Senate. All were men of well earned distinction. There was on the list no common-place name.

Mutual respect and sympathy have always been more powerful in promoting unity of action than the edicts of legislatures or the decree of courts, and this thought was foremost in the minds of many who favored the organization of the Association. In reply to the call one wrote, "It is obvious also that such an association and its meetings would have a powerful tendency to weaken mutual prejudices, to promote harmonious and fraternal feelings amongst an influential and leading class of men, and would be a means of cementing our Union so lately disrupted." A United States Senator from a Southern State wrote, "Occasional interchanges of opinion between members of the Bar from different states and sections of the Union, would not only tend to elevate and broaden the professional mind, but would be a step in the direction of more perfect harmony and concord among the people of our common country. The chief cause of much of the bitterness and sectionalism which have too long prevailed among us, has been mutual misapprehension of the character and motives of each other. If it were possible for any considerable number of the citizens of the different sections of the Union to mingle together at stated periods, and contemplate the diversified circumstances and situations in which a Kind Providence has placed them, it would be found that all our essential differences of character, habits, pursuits and

opinions, are only the natural result of a wise distribution of advantages intended to render more prosperous and happy all classes and conditions of our people. \* \* \* There ought to be found somewhere in our system a calm conservative power which can expose fallacies, point out abuses, and suggest reforms without violence or shock to our government."

Benjamin H. Bristow wrote, "I write this note \* \* \* to express my hope that an American Bar Association will be established \* \* \* so that true reforms may be projected in the administration of public justice from a responsible source."

Thus, on Wednesday morning, August 21, 1878, in the little court room at Saratoga, there met a hundred American lawyers from half of the then states of the Union who proceeded to organize the American Bar Association. Mr. Bristow was made permanent Chairman. Two days were devoted to organization. A Constitution, the draft of which had been prepared by Mr. Baldwin, was adopted; permanent officers were elected, and the work was laid out upon lines which in the main have been adhered to for forty years. During the two-day session many applications for membership were received, and the first directory, showing a membership of two hundred eighty-nine, representing twenty-eight states and the District of Columbia, is a valuable historical document.

Louisiana headed the list with thirty-three members; New York came next with thirty-two; Connecticut and Massachusetts twenty each; Maryland and Mississippi seventeen each; Missouri thirteen and Virginia nine; one-third of the membership came from the Old South, and showed a most generous response to the invitation from the North to form a fraternal professional brotherhood. Only three states east of the Mississippi,—Alabama, North Carolina and Wisconsin—were unrepresented.

James O. Broadhead, a leader of the St. Louis Bar, was elected President; Edward O. Hinkley of Baltimore was made secretary, and Francis Rawle of Philadelphia, treasurer. Among the first vice-presidents were: David Davis of Illinois, who shortly before had resigned from the Supreme Court of the United States to accept an election to the United States Senate; Benjamin H. Bristow of Kentucky; Judge Thomas M. Cooley of Michigan, and Clarkson M. Potter of New York. Judge U. M. Rose of Arkansas and Judge

Walter Q. Gresham of Indiana were members of the General Council, while Lyman Trumbull of Illinois, William P. Frye of Maine, Charles F. Manderson of Nebraska, George Hoadley and Calvin S. Bryce of Ohio, George Shiras of Pennsylvania and John W. Daniel of Virginia were members of the local councils of their respective states. All were lawyers of marked ability and many, either before that time or later, rendered important public service. Seven standing committees were appointed. Of these Judge Simeon E. Baldwin served on jurisprudence and law reform; Judge Gresham on judicial administration and remedial procedure; Judge Rose of Arkansas and Governor Hoadley of Ohio on legal education and admissions to the Bar; Lyman Trumbull of Illinois on commercial law; William M. Evarts and Thomas M. Cooley on international law; Edward J. Phelps on publication, and John Randolph Tucker on grievances.

Others who became members of the first annual meeting were: David Davis of Illinois, long a member of the Supreme Court of the United States, later United States Senator and for a time widely and favorably considered for the Presidency; Charles W. Fairbanks of Indiana, later Vice-President; William P. Frye of Maine, long United States Senator; Charles J. Bonaparte of Maryland, later United States Attorney General; James B. Thayer of Massachusetts, for many years Dean of the Harvard College of Law. Benjamin Harrison, Thomas A. Hendricks, William C. Whitney and Alphonso Taft became members at the second annual meeting. Wisconsin did not appear on the membership roll until the third annual meeting; the first member elected from the State being John W. Cary. He was also Wisconsin's first member of the General Council. Wisconsin's first Vice-President was S. U. Pinney; its first local council, William F. Vilas, Alfred Cary and Ephraim Mariner.

Starting in 1878 with a membership of two hundred eighty-nine, in 1888 it had increased to seven hundred fifty-two; in 1898 to one thousand four hundred ninety-six; in 1908 to three thousand five hundred eighty-five, and in 1918 to more than eleven thousand. Wisconsin's membership now exactly equals the original membership of the Association.

Of the forty annual meetings, nineteen have been held within the state of New York, and all but six, east of the

Mississippi and north of the Ohio and the Potomac; two were held in the far West, at Seattle and Salt Lake City, but none in the extreme South. There is a growing feeling among the membership that some of the meetings should be held during the winter season and as far south as New Orleans, San Antonio or Jacksonville. There have been some notable meetings. Some were notable for the addresses delivered; others for the character and standing of the men in attendance; others for the place of meeting, and still others for all three. The 1896 meeting was favored with an address by Lord Russell, then Lord Chief Justice of England; the 1907 meeting was addressed by Mr. Bryce, British Ambassador, and the 1913 meeting by Lord Haldane, Chancellor of Great Britain. The 1913 meeting was the only one held on foreign soil and was a most memorable meeting, notable not only for the place, but for the addresses and the number and character of the men present. Mr. Kellogg was then president, and Mr. Taft was there elected as his successor. Mr. Taft had retired from the Presidency of the United States but six months prior to the meeting. The pleasure he exhibited on being elected president of the Association will never be forgotten by those who witnessed it. It is mentioned here as evidence of the character and standing of the Association. I have spoken of the Montreal meeting elsewhere. The 1914 meeting, held at Washington, must also hold an important place in the history of the Association. There was an exceptional series of addresses. There was an address of welcome by President Wilson, while his predecessor, Mr. Taft, delivered an address as president of the Association. Mr. Root delivered the annual address, and there were addresses by the Ambassador from the Argentine Republic, the Chief Justice of Canada, and Chief Justice White.

The Constitution provides that the same person shall not be elected president two years in succession, and, as a result, there have been forty presidents. Of the first twenty but two, Judge Baldwin and Moorfield Storey, survive. They are of the type that live long and they are very much alive while living. Of the presidents, Phelps, Choate and Root attained international standing as diplomats. Field, Dillon, Cooley, Carter and Rose acquired fame as authors, while all won distinction at the Bar, and nearly all, if not all, at one time or another filled high public place.

It is to be regretted that Wisconsin had no part in organizing the Association. In view of the great ability of its bar, it is strange that it did not. Howe, Carpenter and Ryan were the pride of the profession. All were conspicuous for their public service, but they were not less conspicuous for their legal attainments. Howe had been offered and had declined a seat on the Supreme Court of the United States. Carpenter was almost unrivalled as a constitutional lawyer, and Ryan was among the first of the judges. Each had a well established national reputation.

#### PRESENT PROGRAM.

Forty years ago, the first president of the Association on taking the chair said: "The Association should watch the progress of events as they occur and be ready to act on all matters of importance when the need arrives." Sound advice and well heeded by the present day officers of the Association. The present program is in line with former efforts, with the important addition of adapting the activities of the Association to the needs of the hour, namely: Aiding the Government to win the war. I shall confine my remarks under this head entirely to the latter.

The 1917 Annual Meeting convened at Saratoga, September 4th, and gave the Association its first opportunity for doing war work. At the first session the Association unanimously adopted the following resolution:

"We are convinced that the future freedom and security of our country depends upon the defeat of German military power in the present war.

"We urge the most vigorous possible prosecution of the war with all the strength of men and materials and money which the country can supply.

"We stand for the speedy dispatch of the American Army, however raised, to the battle front of Europe, where the armed enemies of our country can be found and fought and where our own territory can be best defended."

Perhaps it would be too much to say that all of the eleven thousand members of the Association became bound by the resolutions adopted, but it may well be said that such resolu-

tions called every member to service and pointed the way for intelligent, patriotic action. On the same day the Association passed the following resolution:

*"Resolved, That the Executive Committee of the American Bar Association recommends to the various state and local associations of the United States that they undertake war work along the following lines:*

*"(a) Rendering legal assistance to those entering the federal service and to exemption boards.*

*"(b) Conservation of the practice of lawyers entering such service.*

*"(c) Relief, where not otherwise provided for, of the families of lawyers engaged in such service.*

*"(d) Assist the federal and state authorities in all activities in connection with the war, including the furnishing of capable public speakers for the promotion of patriotism and patriotic endeavor.*

*"And it is further recommended that the work of the various state and local bar associations, along the foregoing lines, be so far as possible co-ordinated and standardized."*

On the second day of the meeting, Mr. Justice Hughes delivered an exceedingly comprehensive and convincing address on "War Powers Under the Constitution." This address was most timely, and its influence far-reaching, for we are to bear in mind that the Supreme Court of the United States had not then passed upon the "Selective Service Act." There were lawyers throughout the Country, sad to say, who questioned its validity. It is not to the credit of the Bar to say that there were many who did so, but the fact is that they did so, either through ignorance or perversity, or both. Mr. Hughes' powerful argument constituted a complete answer to every objection urged against the law. He not only pointed out the validity of the law, but showed that from every standpoint of right and justice it ought to be held valid. He thus rendered a very considerable public service, for there are many who need, not only to be shown that the law is valid, but that it is just and fair.

A third step taken was the creation of a special war committee by the unanimous adoption of the following resolution:

"That a war committee of this Association is hereby constituted to consist of the Honorable Elihu Root and four other members of the Association to be appointed by the President of the Association, which committee shall consider and take such action as may be appropriate concerning matters from time to time arising by reason of the war and in which the Association may be of service to the general welfare."

The committee so provided consists of Elihu Root, former secretary of war, secretary of state and United States Senator; William H. Taft, formerly federal judge, Governor of the Phillippines, secretary of war and President of the United States; Jacob M. Dickinson, formerly secretary of war; Frederick W. Lehmann, formerly Solicitor General of the United States, and George Sutherland, formerly United States Senator. Another step taken at the Annual Meeting was the adoption of a resolution, offered by a Wisconsin member, urging all members of the Bar, those who are not as well as those who are members of the Association, to assist by public addresses, newspaper articles and otherwise in educating the public to a correct understanding of the war situation, and the need of a vigorous prosecution of the war.

In October, the Provost Marshal General requested the cooperation of the Association in furnishing legal advice to registrants under the "Selective Service Law," and in November he communicated directly with the officers of the Association in their respective states requesting them to cooperate with the Governor in the organization of legal advisory boards. This was done. A Central Legal Advisory Board was organized in each state, and a local legal advisory board in each county. It is said that there are approximately forty-six hundred of these local legal advisory boards in existence.

In December the matter of utilizing the services of lawyers was brought directly to the attention of President Wilson. The matter was made a subject of Cabinet discussion, and the conclusion was reached that the Association should be requested to recommend lawyers for Government service. At the suggestion of the President, the Government furnished the Association with offices in Washington. A working force was thereupon installed and the task of supplying the Govern-

ment with competent lawyers was undertaken. Mr. John Lowell of Boston, chairman of the special committee for war service, is in charge of the work. He writes me that many calls are being received, and that frequently as high as twenty positions are open at one time. A large number of lawyers have tendered their services, and there are now about six thousand names upon the list.

The compensation offered is not inviting, but the cause is inspiring. Mr. Lowell writes me, under date of June 22, 1918, as follows:

"The compensation offered lawyers for positions here in Washington generally runs from \$150 to \$200 a month. These positions usually require the experience obtained through general practice and generally require a residence in Washington. Most of them are filled by lawyers from 31 to 45 years of age.

"There are also certain positions requiring special qualifications where the compensation is somewhat larger."

The Committee furnishes a form card to be filled out by those desiring to offer their services. It calls for information as to name, age, residence, place of birth, citizenship, dependents; special preparation; military, industrial or other experience; pay desired, etc., and it requests applicant to state whether he will go anywhere in the United States or abroad.

The services rendered by lawyers in aiding the registrants properly to make out their "Questionnaires" during the late registration period was of great value to both the Government and the registrants. On the whole, the members of the Bar in Wisconsin appear to have given generously of time and effort in the performance of the work. Some have spared neither time nor health. The local legal advisory board of Milwaukee, consisting of William Kaumheimer, C. H. Van Alstine and A. C. Umbreit faced a hard task and performed it remarkably well. Men who thus render substantial public services, receiving neither compensation nor titles, are deserving of commendation and recognition. A few shirked miserably and some even made the occasion an opportunity for gain. The Washington Committee is now engaged in furnishing the Judge Advocate General, the Adjutant General of the Army, and the Law Department of the Navy



the names of lawyers to assist soldiers, sailors and their dependents in times of emergency. It is endeavoring to provide free legal advice to soldiers, sailors and their dependents throughout the country. It has undertaken to check the activities of claim agents and pension attorneys who have been endeavoring to exploit claims. It is now completing a list of prosecutors willing to assist the District Attorneys in cases of emergency. It is directing attention to the enforcement of anti-loafing laws in order to increase the supply of labor. At the request of the War Department it is co-operating with representatives of the army, navy and state departments in the development of a plan for utilizing the manpower of the Nation. It is aiding the custodian of alien properties. It is also assisting in several other ways, not the least of which is "In persuading lawyers who are actively engaged in war service in their various localities that their work is of more value at home than in Washington." After enumerating the services being rendered by members of the Bar, Mr. Lowell adds, "Other opportunities for service are continually presenting themselves, and we are convinced that the work of the committee is becoming daily more and more valuable."

What of the future? It has been said that "The other learned professions all outdo our own in direct immediate value to a nation in arms." Let us hope that the present war may disprove the accuracy of that statement. It is pleasant to note that the President of the United States, the Secretary of State, the Secretary of the Treasury, the Secretary of War, the Secretary of the Navy, the Provost Marshal General, and the Commanding General of the Army are all lawyers. There are literally thousands of lawyers in less conspicuous places, and many are in the camps and on the field of fight. Well may it be so, for the qualities which fit one for success in the law fit one also for success upon the battle field. The lawyer must observe accurately; adjust himself quickly to emergencies, and decide firmly. He must have presence of mind, poise, courage, and power of command. The army officer, whether captain, colonel, or general, must likewise have all these. The training which fits for one fits for the other.

This ought to be, and, so far as our country is concerned, let us hope that it may be largely a lawyers' war. The law-

yers are fighting and they will continue to fight. They are directing fighters, and let us hope that they may continue so to direct. While doing all this, it is the province of the lawyer to preserve order at home. Let us so organize the Bar of the State that the public may be informed, and order at all times preserved. We should not leave it to the authorities at Washington. We should ourselves take the lead, enroll every lawyer, and assign to him a task. The public needs to be educated; it needs to be awakened to a realization of the danger; it needs to be informed. By tireless industry; by much study, the lawyers of the State should acquaint themselves with the history of the events leading up to the war. They should at least acquire a general familiarity with the history of the European situation and the intricacies of European diplomacy. They cannot afford to be ignorant of the long centuries of deception, fraud, bribery, conspiracy and murder characteristic of the two great central European dynasties, the Hohenzollern and the Hapsburg. To know and to understand their history is to know and to understand how the war came. The Bar should become responsible for an intelligent public opinion.

The Bar should look to the future of the law. Ruskin says, "If you want to know the truth of a thing, go to the great poets, for they see it more clearly and earlier than anybody else." The poet said: "Law is the deep, august foundation whereon Peace and Justice rest." The law is in truth the foundation of peace and justice, for there can be no justice without peace, and no peace without justice. The world is praying for peace, but fighting for justice. The tramp of armies is everywhere heard, and might grips right in the struggle for supremacy, because the law failed. I do not mean the private law, but the law of nations. That law must be builded anew by the members of the Bar, and the least among them may be of some aid.

The times demand learning. They also demand clear thinking and bold speaking. It is the duty of lawyers to understand the great problems before us and speak fearlessly. They should lead the thinking of the age and shape the destinies of a nation, perhaps of a world. The vanity and the cowardice which seek satisfaction in the badges and the emoluments of public office will deter many from doing their part. The flabby minded, the prattler and the pala-

verer, overlooking mighty facts, will see in this war the end of armed strife. Let us beware! Terrible as is the present struggle, it is as nothing to the coming one, unless the law builds a firm and lasting foundation for justice upon the cornerstone of a righteous peace. Racial, religious and social antipathies will re-assert themselves, and no system which the wit of man can devise will withstand the later furious tornado of war, unless there is developed an international law which takes cognizance of those antipathies and wisely provides accordingly.

**"SHOULD TRUST COMPANIES BE PROHIBITED  
FROM SEEKING EMPLOYMENT IN THE  
MAKING OF WILLS AND ADMINIS-  
TRATION OF ESTATES?"**

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**BY CHRISTIAN DOERFLER.**

**DELIVERED JUNE 26, 1918.**

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The subject for discussion, in which the affirmative has been assigned to me, is as follows, to-wit: "Should Trust Companies be Prohibited from Seeking Employment in the Making of Wills and Administration of Estates."

A trust company is a corporation, and, like all other incorporated companies, a creature of the Statute. In this state, trust companies are not organized pursuant to the provisions of the general Statute on incorporations, but are created under and pursuant to Chapter 94 of the Statutes of the state. A trust company, like all other corporations, has only such powers as are expressly delegated to it by the provisions of the Statute, and such which it incidentally has and must have for the purpose of carrying out the objects and purposes of its creation.

The express powers designated to a trust company under the provisions of our Statutes, are contained in Section 2024-77k, so that our trust companies have the powers therein designated, and such incidental powers absolutely necessary and essential for the purpose of carrying out the objects and purposes for which they are created.

The principal powers delegated expressly by the Statute authorize such companies to take, receive, hold, pay for, re-convey and dispose of any effects and property, real or personal, which may be granted, committed, transferred or conveyed to them with their consent, upon any terms or upon any trust or trusts, at any time, by any person or persons, and to administer, fulfill and discharge the duties of such trust or trusts for such remuneration as may be agreed upon. They are also authorized to act as agent or attorney (attorney in fact), for the transaction of business, the management of estates, the collection of rents, interest, dividends, mortgages, bonds, bills, notes, securities or money, and also as agents for

the purpose of issuing, negotiating, registering, transferring or countersigning certificates of stock, bonds or other obligations of any corporation, association or municipality, and managing sinking funds therefor, on such terms as may be agreed upon, and may also (and this is the provision in which in this discussion we are principally interested), accept and execute the offices of executor, administrator, trustee, receiver, assignee or guardian, &c.

Of course, it must be readily conceded that nothing contained in the Act authorizes a trust company to practice law, and it would seem that even the Legislature could not have authorized such practice on the part of such companies, without an amendment to our constitution, which, though not expressly, but inferentially, recognizes an attorney at law as a part and parcel of the judicial system of our state, and an inherent, essential element in one of the three distinct branches of our state government.

In treating of the subject at hand, I will review the same from two standpoints, namely: First, from the standpoint of the public, and secondly, from the standpoint of the legal profession.

We have observed for a number of years past, with considerable anxiety, the advertisements of trust companies in the public press, by circular letters sent out to the public in general, and by placards in street cars and other public conveyances the glaring and undignified announcements and invitations by and through which it is contemplated by these companies to induce the public at large to confer in a confidential and fiduciary way with the officers of the trust companies with reference to the drawing of wills, the administration of estates, the execution of trusts generally and the giving of advice strictly legal in its nature. We know that these companies as a rule are organizations with high sounding names intended to inspire confidence, and created as auxiliaries to large banking institutions, and that they are officered by men of good repute and high standing in the financial world. This latter fact in itself has a very strong tendency to create confidence on the part of the public, and the truth and honesty of the statements contained in these alluring advertisements.

These advertisements appear in large and attractive type, properly embellished with color settings to attract attention, and with pictures to interest and attract the curious and the

observing. Among other things, they invite the general public to call at the office of the trust company if they contemplate making a will,—only for a general conference,—for a friendly chat, all gratuitous, and strictly confidential. In other words, these companies place themselves before the public at large in the position of being a sort of charitable institution, designed to promote the financial welfare of the people at large, and to ease their minds with reference to their holdings and the manner of their disposition after death. These advertisements, of which a number are hereto attached, and are open for inspection, remind me of the announcements of quack practitioners who advertise “no cure, no pay; consultations absolutely free and confidential.” Undoubtedly the high classed officials connected with these corporations are in full harmony and sympathy with all the legislative enactments tending to eliminate delusive advertising on the part of medical practitioners. They are also in favor of properly restricting promoters from falsely and untruthfully advertising so-called “Get-rich-quick” concerns. They scoff at an attorney at law who is commonly known as an “ambulance chaser,” and whose business is to stir up litigation, to follow those injured by accident, in order to secure a retainer. But no fair minded man can scrutinize this series of shrewdly designed and intelligently outlined advertisements, without coming to the conclusion that the practice resorted to by these companies is fully as objectionable and as injurious as any which have been herein referred to.

In the first place, the statement held out to the general public are false, deluding and dishonest. The officers of the trust company, when they invite the general public to confer with them in the drawing of a will and the disposition of their estates, all gratuitously, have not in mind a public benefit, but solely a personal object which it is the object of the company to attain, namely, to secure its own profit. The man who arrives at the office of the trust company pursuant to such an advertisement, and confers with the proper official, is first and above all advised to name as executor or trustee, the *trust company*. And all of the alleged advantages of such an act are fully explained and commented on. The ordinary man has little knowledge of the affairs in which the trust company deals. He is not represented by counsel, and takes it for granted that these representations are all true, and that

there are in reality no two sides to the question, and seldom, I am convinced, does one leave without being seduced by the wiles of these trust officers in doing just exactly what it is the object and purpose of these advertisements to accomplish.

It is true that at times individual personal representatives and trustees have gone wrong. But there is ample protection for all interested, in the law, for under our Statutes, executors can be compelled to furnish bonds, administrators and legal trustees *must* furnish bonds, and the Statutes fully provide that County Judges, who are charged with the duty to supervise the administration of estates, the execution of trusts, can fully inform themselves from time to time, by proper reports, &c., and citations, of the condition of the trust estate, and all parties interested particularly have the right at any time to have representatives and trustees cited before the Court in order to establish the true condition of the trust estate, provided there is any reason for believing that a violation of the fiduciary obligations has been committed.

Furthermore, the appointment of a trust company removes entirely the human, or what might be better stated as the humane side of this branch of the business. We have not yet arrived at a state of affairs whereby we have lost all our faith in the natural and have placed it all in the artificial and the unnatural. When we come to the drawing of a will, to the point where disposition must be made for those who are nearest and dearest to us, we then naturally turn to our nearest relatives, or, if such are not available or are incompetent, to our friends, and to our business associates.

While I am not here to distinguish between the advisability or unadvisability of one or the other of these systems involved, I have a strong conviction in my own heart, which I believe is participated in by members of the profession generally, by judges and by the public at large, that the enactment of the Act by which trust companies are authorized to perform the functions with which they are now clothed by the Statute, was a great mistake, from the standpoint of the general welfare.

Individual executors, administrators and other representatives, frequently perform their services gratuitously. Oftentimes it is the last service that an individual can perform for another, out of respect for the memory of the deceased, or an incompetent, and tending to aid and assist those nearest to

them and dependent upon them. I have known of many estates in which the administration thereof involved years of hard labor, administered by friends, without asking or receiving one penny by way of compensation.

It is true that the trust company is not required to furnish a specific bond in each particular case; but they are required to put up a general bond with the proper public officials, which must be approved from time to time; they are required to make statements, &c., and are under public supervision, but it must be remembered that trust companies are organized solely for profit, and that the expenses of these bonds, &c., must be and are charged up to those who resort to the services of these companies. These matters are seldom, if ever, explained to those who are lured into the trust company's offices for business purposes.

A trust company in the administration of an estate and in similar business must have the services of counsel, for it cannot practice law, and the proceedings in the administration of an estate are legal in their nature, and come strictly within the province of the legal profession. Most of the estates which find their way into County Court, and most guardianships, and many trust estates, are very simple, in fact, so simple that the administrative part can be readily attended to with perfect ease by any ordinary normal person; and, besides, we have the members of the legal profession, who are here for the express purpose of giving such guidance, assistance and aid in the course of the administration of such estates as may be necessary to bring them to a final conclusion. This, as stated before, is not commonly known by the average man. It is on account of the ignorance of the public in matters of this kind, that they are made the subject of real prey by trust companies, in order that their personal ends may be met.

Nor can it be said, from our experience in the past, that the business as transacted by the trust companies is better performed or more safely executed than by private individuals. It is true that occasionally we hear of an individual fiduciary going wrong; of the misappropriation of funds; of the insecurity of bonds; all of which is disastrous and oftentimes results in great distress and want. This, however, is to a great extent chargeable to the neglect or omission of public officials whose express duty it is to supervise these



transactions. But where we hear of here and there an individual case of misappropriation and wrong-doing, the results are not general where individuals are involved. Seldom does one individual represent more than one trust, but a trust company, as a rule, represents many trusts. In fact, it is the business of such a company to execute trusts, and every effort is made to secure as much business as possible; and if, as it oftentimes happens, by reason of the wrong-doings of trust officers, the failure of public officers whose duty it is to supervise, a trust company deviates from the straight and narrow path, and becomes involved, the loss and suffering becomes general, and the results are disastrous. We have had such experiences in the city of Milwaukee and in other parts of the state, and all the distress and suffering that has been wrought by individual trustees in the state of Wisconsin from the time of its statehood up to the present time, has not left such a trail of misfortune following it as the results which have been brought about by one certain trust company which recently became insolvent and failed, in the city of Milwaukee. It is needless to call your attention to the numerous failures which have been reported from time to time in the Press in the cities of Chicago and New York and in many other cities throughout the entire country. So that I maintain that as far as the public is concerned, from the standpoint of personal safety, the transaction of business by and through individual trustees is infinitely safer and less liable to become disastrous than the transaction of such business through the agencies of trust companies.

Therefore, I maintain, as a necessary inference and conclusion, from the foregoing, that as far as the public is concerned, advertisements of this nature should be prohibited, and that such prohibition by legislative enactment would greatly enure to the benefit of the public at large.

Have you ever in all your experience known of an instance where a private individual has advertised to the public, where in he offers himself in the capacity of an administrator, an executor, a guardian or a trustee? Certainly the members of the legal profession have never stooped to such an undignified and unprofessional practice. We shrink from suggesting our services in a fiduciary capacity, because we realize and fully comprehend what such service means, and what such a relationship implies. But a trust company, artificially created,

without a soul and without a heart, with but one object in view, and that one of attaining profit, immediately upon being authorized to do business, (and such authorization is of comparatively recent date, resorts to all the elusive wiles and methods to do that which individuals, as a rule, have refrained at all times past from doing.

I have often thought, and I believe my doubts have been entertained by many others, that when the creation of corporations for business generally was first authorized, that a great mistake was made. Most of the evils today in our industrial and economic system are traceable to the existence of large corporations, who, by reason of their centralization of wealth and of power, have created a condition whereby they dominate the people of this country and their industrial and commercial interests in a sense of Prussian militarism. It has led this country to the verge of socialism, both by evolution and by revolution. And while I say that I have my serious doubts of the wisdom of the creation of these organizations, I have absolutely no doubt, but, on the contrary, I affirm, that a great mistake was made when artificial bodies were permitted to be born for the purpose of taking over one of the closest and dearest of fiduciary relations existing among men.

Therefore, while trust companies now exist, with the powers well known and referred to, their activities must be restricted, to the end that the greatest good may enure to the people in general.

From the standpoint of the lawyer, trust companies must be prohibited from seeking employment in the manner indicated. The lawyer is not only the agent and employe of the client, but he is a *quasi* public official, designed to aid in the administration of justice. He is inherently a part and parcel of a judicial branch of our government. It is a well-established doctrine that a corporation cannot be licensed to practice law. In *re Co-operative Law Co.*, 198 N. Y., 479—92 N. E., 15; *Hannon vs. Siegel, Cooper Co.*, 167 N. Y., 244; *People vs. Woodbury*, 192 N. Y., 454.

The Statute authorizing the creation of trust companies does not contemplate that such companies shall practice law, nor would the wording of the Statute warrant such a construction. From an examination of the authorities made by me, I am firmly convinced that the drawing of wills comes

strictly within the category of legal practice, and that neither trust companies nor Notaries Public in this state are authorized to draw wills. The province of a lawyer is not confined to practice in the Court, and does not pertain solely to legal proceedings. As is said in the case of *Re Duncan*, 83 S. C. 183:

“According to the generally understood definition of the practice of law in this country, it embraces the preparation of pleadings and other papers incident to such actions and proceedings and the management of such actions and proceedings on behalf of clients before Judges and Courts, and, in addition, conveyances, the preparation of legal instruments of all kinds, and in general, all advice to clients and all action taken for them in matters connected with the law.”

In *Eley vs. Miller*, 7 Ind. App., 529, it is said:

“In a large sense, the practice of the law includes the legal advice and counsel and the preparation of legal instruments and contracts by which legal rights are secured, although such matters may not be pending in Court.”

So that, when a corporation, by its advertisements, invites the public to call at its offices to aid and assist it in the drawing of wills, yea, even if it argues the advisability of appointing a trust company executor or trustee in the will, it is performing the functions of a lawyer, and is giving advice, contrary to law. There is, therefore, no prohibition necessary by the Statute to disqualify a trust company or even a Notary Public, and a trust company guilty of the acts referred to is subject to having its franchise repealed.

It is customary in this state in certain cities, for trust companies to appoint trust officers. Such officers are lawyers, and after securing the legal business through advertisements and otherwise, the legal end of the business is transacted by the so-called trust officer. In other words these trust companies expressly hold out, when they advertise the drawing of wills and the giving of advice on legal matters, that they perform professional duties. True, through the agencies of their legal trust officer, but they are strictly prohibited from doing this under numerous decisions in our state.

In the case of *Re Co-operative Co.*, in 198 N. Y., 479, the Court holds:

"The relation of attorney and client is that of master and servant in a limited and dignified sense, and involves the highest trust and confidence. It cannot be delegated without consent, and it cannot exist between an attorney employed by a corporation to practice law, for it and a client of the corporation, for he would be subject to the directions of the corporation and not to the directions of the client. There would be neither contract nor privity between him and the client, and he would not owe even the duty of counsel to the actual litigant. The corporation would control the litigation. The money earned would belong to the corporation, and the attorney would be responsible to the corporation only. His master would not be the client, but the corporation, conducted it may be wholly by laymen, organized simply to make money and not to aid in the administration of justice which is the highest function of an attorney and counselor at law. The corporation might not have a lawyer among its stockholders, directors or officers. Its members might be without character, learning or standing. There would be no remedy by attachment or disbarment, to protect the public from imposition or fraud; no stimulus to good conduct from the traditions of an ancient and honorable profession, and no guide except the sordid purpose to earn money for stockholders. The Bar, which is an institution of the highest usefulness and standing, would be degraded if even its humblest member became subject to the orders of a money making corporation engaged not in conducting litigation of itself, but in the business of conducting litigation for others. The degradation of the Bar is an injury to the state. A corporation can neither practice law nor hire lawyers to carry on the business of practicing law for it, any more than it can practice medicine or dentistry by hiring doctors or dentists to act for it."

So that a corporation advertising ostensibly, as stated, is engaged in the practice of the law, even though it hires a lawyer to do the legal work.

Neither is it always consistent for the attorney for a trust company to draw the grantor's will or his deed of trust. I quote from the report of the Committee on Unlawful Practice of the Law, of the New York County Lawyers' Association, which I think is apt, logical and directly in point:

"When, therefore, the trust company offers to draw one's will as a means of securing the position of trustee under the will, and offers the services of its own attorneys for the purpose, it must find its authority in some express provision of law distinguishing it from any other corporation. The case is not the simple case of the ordinary request of a lay trustee that his own counsel be permitted to draw the trust deed or will. The interest of the grantor is not identical with the interest of the trustee, and ordinarily the trustee's lawyer would not be qualified to safeguard the interests of the grantor. By what change in professional attitude has it become proper for him, who is the *paid counsel for the trustee*, to be also the counsel for the grantor? And if he is to be paid for his services and the employment is secured by *solicitation* or *advertising*, how has the nature and character of the service been distinguished from that of any lawyer whose business is solicited through his efforts?

"So far as the attorney is concerned, the violation of the standards of professional ethics is clear. The only argument presented by counsel for the title companies is that, to be permitted to draw the instruments by which the office is created, is a necessary incident to the exercise of their charter powers to act as trustees or executors. What is the meaning of the words 'necessary or incidental to' as used in this connection? Careful review of the cases demonstrates that these words do not cover any practices that may be indulged in as an incident, but justify only practices as are so naturally cognate to the performance of the charter function as to make it a part of the function itself.

"Obviously to become a trustee or executor under a will does not require that the trustee or executor shall draw the will or the trust deed. Indeed, so modern is the practice of trustees in publicly offering themselves as fiduciaries that it only began when trustees and execu-

tors were permitted to don the corporate form. No one would have thought of a private individual publicly advertising to become trustee or executor under a will and agreeing, additionally, as an inducement, that he would have his own lawyer draw the trust deed or will. How, then, can it be said that the drawing of the instrument creating the office is a necessary and incidental exercise of the charter power to act as such an officer? If this position taken by counsel for the title companies is unsound, then their entire reasoning falls to the ground, in so far as it is applicable to those advertisements relating to trusts; and this applies with equal force to all the trust companies."

I wish that the law with reference to the drawing of wills would be more generally recognized, and offenders against this law prosecuted, for of all legal complications that arise by reason of the acts of unprofessionals in drawing wills, there are none that compare in number and amount, with those which result from inexperienced and unlearned Notaries Public, real estate men and laymen generally.

One of the most important functions that a lawyer performs is the drawing of a will. It involves the knowledge of descent of real estate, the subject of uses and trusts, of violations of the Statutes with reference to perpetuities, and many other provisions. The last wishes of a man with reference to the disposition of his property should find due interpretation by and through intelligent legal aid, and no man not having the necessary qualifications and knowledge should be permitted to perform so important a function, and they are not permitted so to do under our law.

As already stated, the lawyer is an essential part of our machinery of justice, and I doubt very much whether the legislature would have authority to abolish this profession. The legislature, under the decisions, has the authority to lay down rules and conditions for admission to the Bar, and to some extent, restrict the conduct of the profession, but inherently, the admission of lawyers to practice and their discipline and conduct, is a part of the inherent jurisdiction of the Court.

Now let us consider what the practice now greatly in vogue, with reference to trust companies, complained of, will

ultimately lead to. Corporations have reached out in all directions and have assumed the province of nearly every industry or trade, industrial, financial, commercial and economic, and are now endeavoring to enter the field of monopolizing the legal profession. I have high regard for the character of the old time lawyer. He is an independent master of his own profession, and has always been looked up to by the public in general, with high respect and appreciation.

I will quote the following apt words from Ex-Attorney General Wickersham, in his recent address before the American Bar Association, at Chicago:

“What is to become of the old time relation of mutual confidence and esteem between counsel and client, if the most sacred and solemn act of life shall be dealt in as merchandise, and formulated by the employes of incorporated commercial companies, instead of by the trusted adviser and friend of a lifetime, the repository of family secrets, the moderator of asperities, the harmonizer of difficulties, the wise guide who restrains the angry parent or the jealous husband from irreparable acts of injustice, and from testamentary declarations which may constitute legacies of hate.”

To a great extent, the disrepute in the minds of the public that the lawyer has suffered, is due to the manipulations and seductions of large combinations of capital and of trusts. And it is these large combinations who have used the keen legal mind of the lawyer, his business experience, his fine reasoning and his power of discrimination, in building up this system of corporate organizations and wealth which, as already stated, is, to my mind, the basic reason for the industrial and economic and commercial unrest of the nation. As they have proceeded in their nefarious ways in monopolizing the industry and trade of the country, so they are now reaching out to monopolize the practice of the legal profession. If they have such a desire, let them do it honestly; let them do it without any camouflage; let them amend the Constitution, and let them procure legislation which will justify them in doing what they are attempting to do, and are now doing illegally. Let them refrain from doing indirectly that which under the law, according to the decisions of our Courts, they are not permitted to do directly.

The professional services rendered in the management of estates, to executors, administrators, guardians and trustees, constitutes about one-third, if not more, of the entire field of activity of the lawyer. It is in many respects the most interesting and most desirable part of the profession, and the most remunerative. The trust companies, being organized solely for private gain and profit, readily realize this, and by their selfish efforts have already succeeded in depriving the rank and file of the profession of a great part of that business which in due course of professional life belongs to the rank and file of the practicing attorney. When once the attorneys to a great extent become the mere tools and hirelings of trust companies, as they have to some extent of large corporations, great inroads will have been made in the work of the legal profession, and the dignity, respect and standing of the lawyer before the public will have greatly depreciated. And if it is true, as it has been pronounced by Courts of last resort many times, in numerous decisions, that the profession of law is absolutely essential in our present system of jurisprudence in this country, then anything such as the practice of trust companies complained of, which humiliates the lawyer and depreciates the high standing which he has held, also effectually operates in derogation of our judicial system.

Unless the practice of trust companies can be regulated and unless the practices complained of can be eliminated, and unless the lawyer can retain the high standing which he has heretofore held in the eyes of the public, with reference to his noble profession, there will be only one solution, and that is the same as will inevitably follow with our other large aggregations of corporate entities,—a complete and thorough socialization of the same for the benefit of the public at large.

I have on numerous occasions, before the local Bar Association, and in my address as President of this Association, called the attention of the profession to the danger staring us in the face. Unless the lawyer in his conduct maintains his dignity with the people at large; unless he refuses to permit himself to be made the mere sordid tool of large aggregations of wealth; unless he comes to a realization of the highest duty that devolves upon a member of this profession, namely, to aid in the administration of justice; unless he takes an active and lively part in a movement to restrict



the greed and transgressions of the trust companies in the field which naturally belongs to his profession, the legal profession as it has existed from time immemorial will become a thing of the past, and lawyers will become the agents and representatives of the state alone, paid out of the public treasury, with but one object and purpose, to aid in the administration of justice.

Of course, students of social economics of a particular class herald with joy the tremendous power vested in large corporations. They contend that this will more readily lead to the socialization of everything. This has already made itself manifest in part of Europe, by the government ownership of railroads, of public utilities, of banks and of many industrial enterprises. This has already been substantially accomplished in the United States, by the government taking over the railroads. If this is the direction that we are headed to, and if we can be convinced that it is right that this shall follow, then perhaps, and only then, are the trust companies by their flagrant abuses of their rights, performing a function which will enure to the benefit of the people at large.

So that I say, in conclusion: From the standpoint of the public at large, viewing the profession as it now exists, and viewing it as our life work, and one to which we are destined to devote our best energies and efforts, these objectionable practices of trust companies should be prohibited. The present time is fraught with evolution and with revolution. We know not today what our status may be in a few years hence. The great so-called captains of industry openly declare that after the war, great changes will take place in our industrial and economic life, and that the rank and file of the people will receive great benefits thereby, and that there will be a more just and equitable distribution of wealth, and that the workers of the world will receive as the fruits of their labor a reasonable compensation in proportion to their labors performed. This revolution and this evolution may sweep from its present existence the legal profession; but while it still exists, let us bend every effort to maintain it as one of the inherent elements of our judicial system. Let us dignify it; let us watch with jealousy all transgressions in its field; let us prohibit or cause prohibitory laws to be enacted, so that such disreputable and dishonest practices as trust companies have been guilty of in the past, may become

impossible, and so that while we do exist, we may maintain the respect of the public at large and our own respect as lawyers.

EXTRACTS FROM TRUST COMPANY ADVERTISEMENTS.

"We can help you to write your plans into a will, and will work out your affairs just as you would have them worked out—not in a haphazard way, with too much left to chance."

"We are only able to broach this important subject in this booklet. May we ask that you call for a fuller discussion of it—a discussion from the standpoint of your own special problems and your own special plans for meeting them?"

First Trust Company, Milwaukee, July 13, 1917.

"With these and other advantages, this company must appeal to your judgment as being the ideal guardian. We invite you to go over these plans with us in a confidential conference. We will give you the benefit of our experience in considering them. We will make no charge for our advice. May we not have the pleasure of a call from you?"

First Trust Company, Milwaukee, October 5, 1917.

A pamphlet of the Wisconsin Trust Company, of Milwaukee, issued November 2, 1917, entitled "Who Should Make a Will," contains many paragraphs coming strictly under the subject of legal advice. It contains, among others, the following:

"Who should be your executor? Obviously the proper course is to name an institution which specializes on matters of this kind. A modern Trust Company—the Wisconsin Trust Company—is the answer."

"The best thing you can do is to have a talk with some one who knows more about these matters than you do. Find out just how your family interests may best be safeguarded. Ascertain just how this institution can safeguard your interests and the interests of your heirs. The officers of this company are at the command of you and your attorney. We invite you to call and discuss this important matter in confidence."

In a pamphlet of the Wisconsin Trust Company, of Milwaukee, issued in December, 1917, considerable legal advice is given on the subject of an executor, administrator and

trustee, and sets forth numerous reasons why you should name the Wisconsin Trust Company as executor or trustee.

In a pamphlet of date of October 6, 1917, of the Wisconsin Trust Company, of Milwaukee, entitled "Today and Tomorrow," considerable legal advice is given upon the necessity of drawing a will or making provision for a trust. It also sets forth numerous reasons why you should appoint a trust company as executor, administrator or trustee, and then continues as follows:

*"As executor, the Wisconsin Trust Company will probate the will; it will inventory the property; it will assume charge of your estate and perform all acts necessary for its protection; under the direction of the Court it will pay all claims against the estate; it will account to the Court for all receipts, disbursements and expenses."*

*"All conferences are held strictly confidential."*

Wisconsin Trust Company, January 31, 1918, under title "Will a Trust Company Increase my Estate?"

*"You realize, doubtless, that your death without a will will compel an immediate division of your property among your legal heirs, absolutely in accordance with the laws of the state. Will that be the best way to increase the value of your estate? Have you considered whether your heirs would probably be assured of a safer, surer, larger income if your estate is administered as a whole? The only way in which you can provide for this is by giving instructions to that effect in your will, for the law says that in the absence of a will, your property must be apportioned among your legal heirs."*

*"Will my estate stand a better chance of increase under the capable management of a trust company than in the hands of an individual as mortal as myself? A most vital question. Consider it from all sides. Answer it now. Tomorrow may be too late. Your answer should be in the form of a will."*

*"All matters of importance relating to any trust or estate are passed upon and approved by a committee of bankers and business men, selected from the Directors of the company."*

*"Interviews on the subject are invited, without incurring any obligation."*

Do not these advertisements remind one of old times, when medical quacks advertised similarly in the public

press? And this by some of the foremost bankers and business men.

In a pamphlet of the Wisconsin Trust Company, entitled "Your Life Insurance Money" sent out early in 1918, you will find the following:

"Do you know it is said that more than 75% of life insurance money is lost through extravagance or unwise investments within seven years of its payment to beneficiaries? Some authorities place the amount as high as 90%."

(The writer would like to know the source of this estimate, which, in his opinion, is grossly exaggerated.) It then continues:

"Is it not your duty to make provision that insurance money will without fail provide for your beneficiaries? You can create a trust with the Wisconsin Trust Company. It is quite a simple matter to do this. It is your right in establishing a life insurance trust to determine the conditions under which you wish the funds administered."

A pamphlet of the Wisconsin Trust Company sent out some time during the year 1918, on the subject of "Life and Property, or the Descent of Property under the Laws of Wisconsin," contains what purports to be a digest of the law on the subject, and is set forth in questions and answers, in primer style. For instance, it proceeds:

- "Q. Who may make a will? A. \_\_\_\_\_
- Q. When should a will be made. A. \_\_\_\_\_
- Q. What does the law require for the making of a valid will? A. \_\_\_\_\_
- Q. Is it necessary to inventory or disclose the character of my estate in my will? A. \_\_\_\_\_
- Q. May a married woman dispose of her property by will? A. \_\_\_\_\_
- Q. Does the law governing the descent of property affect the disposition of property by will? A. \_\_\_\_\_
- Q. What are some of the reasons for a man to appoint a trust company, rather than his wife, to carry out the provisions of his will? A. \_\_\_\_\_
- Q. Why is the Wisconsin Trust Company better qualified to act as the executor of my will than any individual? A. \_\_\_\_\_"

And numerous other questions and answers, and among them are the following:

“Q. What service does the Wisconsin Trust Company render as my executor?

A. As executor, the Wisconsin Trust Company will attend to the *probating of the will, &c.*

Q. What service does a trust company perform as trustee under the will?

A. (After speaking of various services, it proceeds): Such trusts may be made as to all your property or as to any part of it.

The law relating to trusts is very complicated, and no one should attempt to make a trust in his will *without expert advice.*”

Innumerable extracts of a highly objectionable nature could be set forth. Each of these pamphlets is accompanied by a personal letter of the Secretary, signed by him, in which he requests a personal conference, stating that it is impossible to go into all the details in the pamphlet,—(meaning thereby that all other matters not touched upon will be fully covered in an oral conference, which is cordially invited, and which is absolutely free and confidential.”)

## ADDRESS BY MR. BURR W. JONES.

(In Reply to Mr. Christian Doerfler.)

Gentlemen of the Bar Association: The only suggestion which I made with respect to the framing of this question, was that I thought that the one who attacked the trust companies and their practices ought to be first heard, in order that I might know the grounds of the attack. If I had framed the question I should have framed it a little differently, because it seems to me to imply that trust companies are seeking employment in the drafting of wills. Now that is asserted earnestly by Mr. Doerfler. It undoubtedly was the practice of the trust companies in Wisconsin some years ago, to advertise that they would draw wills, and that they would draw them without expense to the one who was to make the will. I have inquired of the four principal trust companies in the state which do the largest amount of this business. There are some other smaller companies, but I have taken the pains to inquire of the two trust companies in Milwaukee, and the two in my own City of Madison, and I find that they deny they are engaged in advertising to draw wills. I am informed that this was the fact: they were informed by their own advisors some time ago that it was not a desirable practice, and they stopped, and I entirely agree with Mr. Doerfler—I shall agree with him in various things—I entirely agree with him in the views which he takes of the sanctity of wills, and I agree that it is improper for trust companies, or their officers, to draft the wills of especially those who propose to make the trust company a trustee. Mr. Doerfler did not perhaps state the ground of it, but it is very obvious to a lawyer. We all agree that in so solemn a transaction as the making of a will there should be no divided allegiance whatever. It is as sacred a duty perhaps, as an attorney can perform, and there might be a possibility of temptation on the part of the trust company or its attorney, to insert in the will something which might be to the interest of the trust company, and something which might be prejudicial to the testator.

So I think on investigation that you will not find in these advertisements of trust companies, certainly the larger trust

companies in this state, that they are seeking employment in the drafting of wills.

Now as to the other main phase of the question, and it is the main portion involved in the discussion, it seems to me I entirely differ from Mr. Doerfler. I do not agree with him that trust companies are not desirable institutions. I do not agree in many of his intimations with respect to sordid corporations and the great injury they are doing to the public. I do not agree with him that it is injurious to the public that trust companies should have the right to administer estates; and there are very obvious reasons, it seems to me, which sustain my contention in respect to that. I do not agree with him for example, that the average administrator or executor of an estate is a safer repository for that kind of business than a substantial trust company, under all the protections which the law affords. Now our statute requires the trust company to make 4 reports every year. It requires that there shall be two inspections by a skilled bank examiner of their affairs, and it is the practice in these inspections for the bank examiner not only to examine the general affairs of the corporations, but to examine particularly the affairs which relate to trusts; to keep tab upon the accounts, upon the investments and the securities of the trust estate. I do not agree that the interests of those who are concerned in the settlement of estates are better protected by the average farmer or merchant or ordinary business man as an executor, or acting as a trustee or administrator. The trust company very soon learns the restrictions of the law, the mode of making investments, the requirements which the statute imposes. The ordinary executor or administrator perhaps performs this duty once or twice in a lifetime. The trust company is required by our Statute, first to have a considerable investment of capital; a paid up capital stock. It is required to deposit with a state officer half of the amount of that capital stock as a security against loss, and it will be found—I differ somewhat from Mr. Doerfler in respect to the facts in that respect—that although trust companies have sometimes failed, in the vast majority of cases these restrictions of the law have prevented the loss to the beneficiaries of estates of a single dollar. Now he refers to the single case of a trust company in Milwaukee which was disastrous and which I have no doubt, has greatly prejudiced many people in that city against the acting by

trust companies as administrators and executors. The bar of the state know something of the peculiar circumstances of that failure. It is no test of the solvency of trust companies in general. I read a statement of the condition of trust companies in 1908, and of their history as executors, administrators, etc., and it was stated that although trust companies had failed in quite a number of instances, yet there had not, up to that time, been the loss to estates of any amount whatever. Probably since that time there have been such losses. I have no doubt there have. But they keep their books systematically. They are required by the Statute to keep their accounts absolutely distinct. They cannot mingle the accounts or funds of one estate with those of another, or the funds of an estate with its own funds. In many ways there are these strict provisions of the law which afford a guaranty to those who may be interested in the settlement of estates.

Now with respect to the security, as to whether the beneficiaries of estates are more likely to suffer loss in the one case or the other. We do not have to go very far into the books to find innumerable cases of losses where perfectly sincere and good men, inexperienced in business, have in their actions as trustees and executors brought disaster to the estate. We read in those reports of their investments in stocks, their investments in suburban property, their investments in manufacturing in which perhaps they themselves are interested. There have been losses made by good men; with the best of purposes, sometimes with the idea of increasing the assets of the estate. Sometimes, it is true, fraudulently, but not very often. They do not understand, and they cannot be educated in the performance of this trust on one occasion or once or twice in a lifetime. They cannot understand the real sacredness of the trust; and I appeal to the lawyers here whether you have not been surprised many times at suggestions which have been made to you by men who stood high in the community, high in their church—suggestions with respect to the investments of trust funds; suggestions that they would like to buy the property of the estate to which perhaps they had become attached; suggestions that if they cannot buy it directly they perhaps can buy it through a friend; with high enough purposes, without any intention to do wrong, they make these suggestions. They have been made to me. I daresay, they may have been made to many of you.



They don't understand the nature and the duty of a trust of this kind. The average trust company ascertains this, knows this before it has existed half a dozen months. They really know it at the outset. They have their counsel to advise them with respect to it.

Now I did not prepare any written address because I did not know what might be the nature of these attacks. Sometimes it is impracticable for an ordinary trustee to give bonds. Mr. Doerfler has suggested that trust companies may be required to give bonds. But you know our Statute provides that they need not give bonds. They do not give bonds as a rule. I think it is very rare indeed that a trust company is required to give a bond in the settlement of estates. But if there is a considerable estate in which an individual is appointed executor or trustee, it has to pay for a bond from a surety company, and there goes out a large sum, there may go out two or three or five hundred dollars a year if it is a considerable trust, as an expense to the estate, because the business man who is called upon to act as the trustee or the administrator cannot furnish a bond.

Now perhaps I have spent more time on this general question whether trust companies ought to be allowed to perform these general duties, than was necessary. I think perhaps it is sufficient to say that two or three days ago I went through a digest which purported to give the Statutes or the substance or summary of the Statutes relating to trust companies, in the management of estates, and I found that in practically, I think every state in this Union trust companies are authorized to do this business. The fact that the usefulness of trust companies in the performance of these duties is thus universally recognized by Statute raises a very strong presumption that the legislation is wise and that it ought not to be rashly set aside. The first trust company was organized almost a hundred years ago. I think it was the Farmers' Loan in New York. It has been a matter of recent development in our West. The trust companies in this state have only been lately organized. Their business has been growing and developing, but the amount of business which they are now doing is growing. It is growing materially. I inquired at our Probate Court, and I found that of 128 estates which were settled between the 1st of May 1917, and the 1st of May, 1918, there were 19—a little over 14% of the estates in our

county—had been given into the hands of the trust companies. It is because we have two trust companies which have the unbounded confidence of the public, and the unbounded confidence of the profession.

I ought to say something about these advertisements of which Mr. Doerfler has spoken. I have not seen them and I don't know how recent they may be. It may be that they are quite recent. But I am inclined to believe that not in very recent years have these advertisements been so frequent as they were. I think the trust companies, perhaps with the advice and conference with lawyers, have come to understand better the real nature of their duties, and that they ought not to advertise to draw wills; they ought not to advertise to give advice; free advice or other advice. They ought not to practice law. I agree entirely with what Mr. Doerfler says on that subject. They cannot practice law, they have no right to practice law.

Now a word with respect to that subject. In our city we have two trust companies. One of them, so far as I know, has no regularly retained attorneys. The other has one. He is a man 85 years of age or thereabouts, who has the unbounded confidence of the trust company and of the community, but he never goes into court to try a case. What is the practice there? The practice is that they do not draw wills in their offices. When persons come to need the offices of a trustee, or executor or administrator, it is the practice of our companies, and I am told that it is the practice of the companies in Milwaukee, to tell these persons to go and see their own attorney. If the deceased has employed a regular attorney, that attorney is employed. In other cases where there has been no regular attorney or where no suggestion is made by the beneficiaries, in my city they send out these estates here and there; and I am very sure that in my city the younger men of the profession get their full share. Perhaps it is because it may be believed that they will perform the business just as well as the older lawyers, and perhaps at a little less expense. At any rate, during the ten or twelve years during which this kind of business has been performed by the trust companies in our city, I have heard no word of complaint as to their administration.

Now why should not a trust company solicit employment? If I have convinced you that it is a proper business for trust

companies to perform; if you are satisfied that the public welfare is subserved by having substantial trust companies able to perform this kind of business, then is it not proper that they should seek the business? I agree with Mr. Doerfler that they cannot practice law. I agree with him that it would be unprofessional and disgraceful for one, of our own profession *to seek* to become administrator or executor, it would be contrary to all the traditions of our great profession. Although if an attorney is asked by a friend to act in that capacity it might be ungracious to refuse. I agree with him also that the trust company is organized to make money. We ought not to confuse their duties and their functions with those of the lawyer. They are organized to declare dividends in a legitimate way to those who may invest their money in them. That being so, if it is a proper business for them to perform, then why should not the trust company apprise the public of the fact that they are able and willing to do this business? I agree with Mr. Doerfler that if there are lying and deceitful advertisements, if the public are deluded, cheated and defrauded, then it is entirely proper that there should be a remedy; but I am inclined to think that the remedy will be forthcoming in public opinion, in fair criticism by the profession and by the public.

Now it is said fear is expressed that the practice of the law will become a monopoly, that it will be monopolized by great corporations. Quite a little was said about the danger of the great corporations; the dangers of the trusts, and the combinations of business. This kind of fear has been expressed from time immemorial whenever there were new industrial, financial or economic developments. When the railroads were projected there came a storm of objection because an infinite number of teamsters, stage drivers, hotel-keepers and many other classes of people were going to lose their employment. The masses of the people had no conception of the vast contribution which the railroad would bring to the labor of this country. There were lawyers, undoubtedly, who lost some clients as that development was going on, but I have never heard that in the long run the lawyers were injured by the building of railroads; that their incomes as a profession have suffered because railroads were built. We have had two or three statutes enacted in our state during the past few years which in some ways have quite materially

affected the incomes of lawyers. There was the Railroad Commission. It took away some business from this lawyer or that, but it has brought other business of a far more important character. Perhaps this was more significantly true of the Workmen's Compensation Act. There was some fear when that Act was passed, that it would cut very deeply into the incomes of some classes of lawyers; but I have not observed that the lawyers who were skillful in trying personal injury cases in days gone by, who could try them well—I have not observed that those lawyers have been bankrupted. They have alighted on their feet as lawyers have in all the years gone by; and I am not inclined to think that we need fear the competition of the trust companies. I have shown I think, at least I have suggested, that there is no loss of business to the legal profession generally. The business is distributed somewhat differently from what it was before. But, Gentlemen, I do not fear that that profession which has existed for hundreds of years, which has had the confidence of the community although it has sometimes been bitterly attacked even by legislation, I have no fear that the profession which gave to the English people their constitution, their system of laws, the Common Law, those liberties for which they are fighting in common with us today—I do not fear that that profession which has given us such men, and given to the English-speaking people such men as Mansfield and Hale, Erskine and Kent, Marshal and Story and Webster—I do not fear that that profession is going to lose its resourcefulness. I do not think we need to fear the competition of any corporations which legislatures may create; and I should be rather sorry if we, as a class, should confess that we are not able to meet all the competition which we have met during all the past. I should be rather sorry to have us arrayed against institutions which exist by law in all the states. It was tried in the State of Washington a few years ago. The lawyers made an organized effort. They went before the legislature, they sought to pass a bill which would seriously hamper the trust companies in the matter of the settlement of estates. They fought it out before the legislature. The legislature came to the conclusion that it was a fight of the lawyers against the people because they believed that the people as a whole were benefited by the existence of these trust companies.

Now I have suggested in a very informal way the views which I have on the subject.

(Applause.)

NOTE—Since the meeting of the Bar Association the following resolution has been adopted at an annual meeting of the representatives of trust companies in Wisconsin:

It having come to our attention that at a recent meeting of the Wisconsin State Bar Association, trust companies were criticized for alleged service in the field properly filled by lawyers, and particularly in respect of the framing of wills and in legal counsel in the administration and settlement of estates; and the representatives of the trust companies of Wisconsin here assembled in annual meeting fully concurring that such service is improper and inexpedient, as well for themselves as for the bar and their clients:

*Resolved*, That we hereby declare that the service so criticized is not rendered by any member of this association; that we disprove of any such service; and that we diligently scrutinize our published advertisements as well as our practice to insure against any public misapprehension in respect of our policy and practice in the matters referred to.

Note by Secretary: The following is self-explanatory and is printed on request:

WISCONSIN TRUST COMPANY.

Milwaukee, July 30, 1918.

The Honorable John B. Winslow,  
Supreme Court Chambers,  
Madison, Wisconsin.

My dear Mr. Chief Justice:—

Referring to the discussion which occurred at Racine in respect of the activities of trust companies:

I inclose herewith a copy of the proceedings had at a meeting of the Associated Trust Companies of Wisconsin, held in Milwaukee, July 9th.

We should be glad, if you approve, to have the report of these proceedings included in the printing of the record which was ordered at the Racine meeting. The criticisms which were made at that meeting appear to me largely based upon a misapprehension of the facts. While the misapprehension is not extraordinary, in view of some past events, it is nevertheless in a way injurious to business organizations whose high

character and usefulness are generally recognized. I do not believe that the Wisconsin State Bar Association would desire inadvertently to do an injury or injustice to any legitimate and well conducted enterprise.

Yours sincerely,

CHARLES M. MORRIS.

G-Inc.

ASSOCIATED TRUST COMPANIES OF WISCONSIN.

Central Wisconsin Trust Company, Madison.

East Wisconsin Trustee Company, Manitowoc.

First Trust Company, Milwaukee.

La Crosse Trust Company, La Crosse.

Northwestern Loan and Trust Company, Kenosha.

Oshkosh Saving and Trust Company, Oshkosh.

Peoples Savings and Trust Company, Green Bay.

Rock County Savings and Trust Company, Janesville.

Savings, Loan and Trust Company, Madison.

Security Trust Company, Racine.

Sheboygan Loan and Trust Company, Sheboygan.

Wisconsin Trust Company, Milwaukee.

Wisconsin Valley Trust Company, Wausau.

Oliver C. Fuller, President, Milwaukee.

W. H. Purnell, Vice-President, Kenosha.

Douglas F. McKey, Secretary, Milwaukee.

At the annual meeting of the Associated Trust Companies of Wisconsin, held at Milwaukee, Wisconsin, July 9th, 1918, at which meeting were present representatives of all of the member trust companies of Wisconsin excepting the Security Trust Company of Racine; the following among other proceedings were duly taken and had:

"The following recital and resolution was proposed, seconded and unanimously adopted:

"It having come to our attention that a recent meeting of the Wisconsin State Bar Association, trust companies were criticized for alleged service in the field properly filled by lawyers, and particularly in respect of the framing of wills and in legal counsel in the administration and settlement of estates; and the representatives of the trust companies of Wisconsin here assembled in annual meeting fully concurring that such service is improper and inexpedient, as well for themselves as for the bar and their clients:

*Resolved*, That we hereby declare that the service so criticized is not rendered by any member of this association; that we disapprove of any such service; and that we diligently scrutinize our published advertisements as well as our practice to insure against any public misapprehension in respect of our policy and practice in the matters referred to.'

The secretary was instructed to transmit a copy thereof to the secretary of the Bar Association with the request that the same be printed in the report of the Bar Association meeting. The secretary was also instructed to transmit a copy of the resolution to the Security Trust Company of Racine for their approval, and, upon receiving their approval, to advise the Bar Association that the resolution was unanimously approved by the trust companies present at the meeting, and the Security Trust Company of Racine."

I, Douglas F. McKey, secretary of the Associated Trust Companies of Wisconsin, hereby certify that the foregoing copy of a resolution and proceedings had and taken by the representatives of the Associated Trust Companies of Wisconsin at their annual meeting held at Milwaukee, Wisconsin, July 9th, 1918, is a true and correct copy of the original resolution and proceedings and of the whole thereof; and that said resolution and proceedings were duly and unanimously had, taken, passed and adopted at said meeting.

And I further certify that pursuant of the direction above transcribed, I submitted a true copy of said resolution to the Security Trust Company of Racine, and that said Security Trust Company of Racine, by the letter dated July 24th, 1918, of its president, Mr. O. W. Johnson, declared full concurrence in the same.

DOUGLAS F. McKEY,  
*Secretary.*

ADDRESS BY MARTIN J. GILLEN,  
ON THE SUBJECT OF  
"WAR SAVINGS."

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DELIVERED JUNE 27, 1918.

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MR. GILLEN: Men of Wisconsin—Mr. Puelicher, who has charge of the War Savings Stamps, in Wisconsin, asked that a number be placed on the program so that its rights might be heard here to-day. You have a long program still ahead of you, and I will only take a few minutes to talk to you on "War Savings." You all are good Americans. You all from Wisconsin have shown your Americanism in a way which does honor to the State of Wisconsin. In all the war work to-day, among all the states, Wisconsin leads on average. She leads on average because of the wonderful work done by the members of the Bar, and the business men of this state in visualizing to the people of the State of Wisconsin the war needs of our nation; and as other states have visualized to them the war needs of the nation and the great issues so they will come up in their work to the standard set by the State of Wisconsin.

The war needs which I am going to talk about are financial. Under the estimates made by the secretary of the treasury, Mr. McAdoo, this government will use something like twenty-two billions of dollars this year. Before the war started we used to operate this government on about one billion dollars a year. Now we have added for this need about 21 billions of dollars. When you stop to consider that the entire wealth of Germany, France and Great Britain is about equal to the wealth of our own country, and then take into consideration the fact that the war debt of Germany to-day is 32 billions of dollars, of Great Britain about 32 billions of dollars, and France about 20 billions of dollars, a total of about 82 billions of dollars, with a worth combined only equal to our own, and then when you consider that our national debt to-day is only about 13 billions of dollars, that of that 13 billions of dollars about 5 billions of it has been loaned to the Allies, you will appreciate that our ground has not been scratched; that we



have not given or loaned until it has hurt us, and that in the richness of this country we can do much more than we have done, though the cost of materials in this country is terrific, and the pace as well is terrific, and yet upon this nation depends the success of this war.

Now, then, under the program of 22 billions of dollars the following is the way that the money is expected, roughly, to be raised: 4 billions on the loan, which is the Third Liberty Loan, already raised; about 4 billions from income taxes, practically already collected; 6 billion by short time paper from banks in this country, which will be raised at the rate of 750 millions of dollars every two weeks; then comes the Fourth Liberty Loan of six billion dollars, which makes 20 billion dollars, and then thrift stamps, or rather, war savings stamps, of two billion dollars, with a net worth of practically one billion seven hundred million dollars. Now the thing that the American people, must get into their heads is that the war savings campaign, and the money from it, is as much a part of the financial program of this Government as is any one of the liberty loans, and the mistake that has been made by the Government in the first instance in trying to put it over, was on the theory of savings. It is something more than that. It is a baby liberty loan, and every man and every woman in this country, and particularly in our own state, must take his quota of it just as he took his quota of liberty bonds. There isn't any escape. It is not a question of how much can I save, it is a question of doing it, of doing your duty on the theory of what is your share as figured out first from Washington, and then within federal reserve districts, and then into the state, then into the county, then into the city, then into the ward, and then into your own holdings. We must do our share so that that loan, the war savings stamp loan, goes over, that the nation may have the money that is needed.

Now I may point out to you something that is quite interesting. The State of Wisconsin, according to the records at Washington that have come to us from Washington, on June 15th, has given to it the first place among its 48 sister states, in war savings stamps. (Applause.) It would not surprise me if the State of Wisconsin again leads all of the states of the Mississippi Valley, and most of the eastern states, in coming through on this campaign. You all know in the first

liberty loan the State of Wisconsin was first among the five states in this district. In the second loan she held the same position. In the third loan she is 2/10 of 1% behind the State of Iowa. In this district are the States of Iowa, Illinois, Indiana, Michigan and Wisconsin; and you loyal Wisconsin men have a duty to perform. You are the sentiment makers. You are the men who have the intelligence, you are the men who have the power of speech, and every Bar in every county in the State should be organized for war work, and you should do your full duty in carrying the message out to the people. We need your work in the State of Wisconsin, though Wisconsin has done wonderfully well. There is some disloyalty still in this state, but keep in mind that the disloyalty that is in the State of Wisconsin can be combatted because it is disloyalty builded upon ignorance. It is not vicious disloyalty, and so you can remove that ignorance and bring the light to those who are ignorant of the wonders of this country and of its liberties, and it should be done in a kindly way, and not with a club. You must bring to the people in your respective counties the message of the financial needs of this country, the necessity for each of the counties in this state to meet this particular duty that the Government calls upon us to perform, and meet it willingly and readily. You men all know what war savings stamps are. I am going to say a few words about this county,—my county,—the county from whence came Justice Dodge and the Chief Justice of our state. We are way off here in the southeastern section of the State of Wisconsin. Few of you ever hear of the County of Racine, and yet I can make the statement, and I question whether it can be challenged that this county has shown a greater loyalty than any county of the State of Wisconsin in all war work, and that this county has led practically every county in the State of Wisconsin in war work, and its work and its plans have been adopted not only in the State of Wisconsin, but in the 7th Federal Reserve District. Its plan of campaign for liberty loan and for the gathering of money was adopted all through this district by Mr. Ross in charge of this district. This city on its call for the Red Cross, was asked for \$40,000. It raised \$110,000; almost 300%. They asked for \$17,000 for Y. M. C. A., and this county raised \$76,000. On the first liberty loan this county was asked for \$1,300,000, and it raised \$1,900,000. In the sec-

ond liberty loan it was asked for \$2,200,000, and it raised \$3,200,000; and in the third liberty loan this county raised 209% of its quota for liberty loan work. (Great applause.)

Within 60 days after war was declared, 3 volunteer companies responded to the government. I point that out to you so as to make this point with the Bar of this state,—that result was due to the wonderful work of the Bar of Racine County in organizing this county, and second, in carrying the message to the people of this county; and as the Bar of this county has done, keeping in mind the historical record made by the older members of this Bar, the men who have gone from it, the younger members of this Bar have kept that honor ever before them; and as they are doing here, so you can do throughout the State of Wisconsin for the glory of this state and for the greatness of our own country. I thank you. (Applause.)

OFFICERS OF THE AMERICAN BAR  
ASSOCIATION, 1918-1919.

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President:

George T. Page, Peoria, Ill.

Secretary:

George Whitelock, Baltimore, Md.

Assistant Secretaries:

W. Thomas Kemp, 1416 Munsey Bldg., Baltimore, Md.

Gaylord Lee Clark, Baltimore, Md.

Treasurer:

Frederick E. Wadhams, 78 Chapel St., Albany, N. Y.

Vice-President for Wisconsin:

William F. Shea, Milwaukee.

Member of General Council for Wisconsin:

John B. Sanborn, Madison.

John B. Winslow, Madison, *Ex-officio* as President of Wisconsin State Bar Association.

Local Council:

Louis Quarles, Milwaukee.

Samuel H. Cady, Green Bay.

A. H. Reid, Wausau.

John H. Bennett, Viroqua.

George E. Morton, Milwaukee, *Ex-officio* as Secretary of Wisconsin State Bar Association.

Delegates to Meeting of American Bar Association, Chicago,  
1918:

Bernard R. Goggins, Grand Rapids.

Edwin M. Smart, Milwaukee.

John M. Whitehead, Janesville.

# OFFICERS OF THE WISCONSIN STATE BAR ASSOCIATION, 1918-1919.

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**President:**

Hon. John B. Winslow, Madison.

**Vice-Presidents:**

- |              |                                    |
|--------------|------------------------------------|
| 1st Cirenit: | Thomas M. Kearney, Racine.         |
| 2nd "        | Charles H. Van Alstine, Milwaukee. |
| 3rd "        | F. C. Beglinger, Oshkosh.          |
| 4th "        | T. M. Bowler, Sheboygan.           |
| 5th "        | W. R. Graves, Prairie du Chien.    |
| 6th "        | Andrew Lees, La Crosse.            |
| 7th "        | Edward Kileen, Wautoma.            |
| 8th "        | O. W. Arnquist, Hudson.            |
| 9th "        | James Clancy, Stoughton.           |
| 10th "       | E. J. Goodrick, Antigo.            |
| 11th "       | John J. Fisher, Bayfield.          |
| 12th "       | J. D. Dunwiddie, Monroe.           |
| 13th "       | C. A. Christiansen, Juneau.        |
| 14th "       | W. L. Evans, Green Bay.            |
| 15th "       | H. R. Reeves, Rhinelander.         |
| 16th "       | F. W. Gennrich, Wausau.            |
| 17th "       | Frank H. Hanson, Mauston.          |
| 18th "       | H. B. Rogers, Portage.             |
| 19th "       | Alexander Wiley, Chippewa Falls.   |
| 20th "       | A. V. Classon, Oconto.             |

**Secretary and Treasurer:**

George E. Morton, Milwaukee.

**Assistant Secretary:**

Arthur A. McLeod, Madison.

**Executive Committee:**

John B. Winslow, Madison.  
George E. Morton, Milwaukee.  
Joseph B. Doe, Milwaukee.  
P. H. Martin, Green Bay.  
Robert Wild, Milwaukee.  
B. L. Parker, Green Bay.  
H. S. Richards, Madison.  
W. A. Hayes, Milwaukee.

## STANDING COMMITTEES, 1917-1918.

(With Date of Expiration).

## Legal Education :

Dean H. S. Richards, Madison, 1918 (Chairman).  
R. A. Hollister, Oshkosh, 1918.  
Vroman Mason, Madison, 1918.  
Francis E. McGovern, Milwaukee, 1919.  
Albert S. Larson, Shawano, 1919.  
S. H. Cady, Green Bay, 1920.  
Charles T. Hickox, Milwaukee, 1920.

## Judicial :

Joseph B. Doe, Milwaukee, 1919 (Chairman).  
Daniel H. Grady, Portage, 1918.  
Solon L. Perrin, Superior, 1918.  
F. R. Bentley, Baraboo, 1919.  
Judge John Barnes, Milwaukee, 1919.  
Edgar L. Wood, Milwaukee, 1920.  
M. J. Wallrich, Shawano, 1920.

## Amendment of the Law :

P. H. Martin, Green Bay, 1919 (Chairman).  
Judge A. H. Reid, Wausau, 1918.  
John F. Martin, Green Bay, 1918.  
Frank H. Hanson, Mauston, 1919.  
Roy P. Wilcox, Eau Claire, 1919.  
Judge C. A. Fowler, Fond du Lac, 1920.  
W. D. Corrigan, Milwaukee, 1920.

## Necrology :

Robert Wild, Milwaukee, 1920 (Chairman).  
George L. Williams, Grand Rapids, 1918.  
H. J. Frame, Waukesha, 1918.  
W. K. Parkinson, Phillips, 1919.  
Andrew Lees, La Crosse, 1919.  
W. R. Bagley, Madison, 1920.  
J. E. McMullen, Chilton, 1920.

**Publication:**

W. A. Hayes, Milwaukee, 1920 (Chairman).  
John C. Thompson, Oshkosh, 1918.  
John J. Wood, Jr., Berlin, 1918.  
J. B. Kemper, Milwaukee, 1919.  
Chauncey E. Blake, Madison, 1919.  
Judge Geo. C. Hume, Chilton, 1919.  
L. G. Wheeler, Milwaukee, 1919.

**Membership:**

B. L. Parker, Green Bay, 1919 (Chairman).  
J. E. McConnell, La Crosse, 1918.  
M. E. Walker, Racine, 1918.  
H. L. Butler, Madison, 1919.  
A. E. Matheson, Janesville, 1919.  
E. D. Minahan, Rhinelander, 1920.  
Raymond J. Perry, Milwaukee, 1920.

**SPECIAL COMMITTEES.****Uniform Judicial Procedure:**

C. B. Bird, Wausau.  
Walter C. Owen, Madison.  
John F. Martin, Green Bay.

**Retirement of Judges—Until 1919:**

W. A. Hayes, Milwaukee.  
J. Henry Bennett, Viroqua.  
Morton E. Davis, Green Bay.  
Merlin Hull, Madison.  
Otto A. Oestreich, Janesville.

**Criminal Law and Criminology:**

Judge August C. Backus, Milwaukee.  
George B. Hudnall, Milwaukee.  
E. E. Brossard, Madison.  
A. L. Hougén, Manitowoc.  
Winfred C. Zabel, Milwaukee.

**Committee on Address of Ex-Pres. B. R. Goggins:**

Prof. Howard L. Smith, Madison.  
Harry L. Butler, Madison.  
Justice M. B. Rosenberry, Madison.

## DECEASED MEMBERS.

Prior to Aug. 1, 1919.

Armington, W. M., Oshkosh.	Husting, Paul O., Mayville.
Aylward, John, Madison.	Ingalls, John P., Elkhorn.
Bailey, W. F., Eau Claire.	Jackson, A. A., Janesville.
Barber, Charles, Oshkosh.	Kestol, James G., Whitewater.
Barber, Frank J., Oshkosh.	Lamb, Francis J., Madison.
Barnes, John, Milwaukee.	Lamoreux, C. W., Mayville.
Blanchard, H. H., Janesville.	Lewis, H. M., Madison.
Bloodgood, Francis, Jr., Milwaukee.	Lando, M. N., Milwaukee.
Bottum, Fordyce H., Milwaukee.	Lindley, Victor, Superior.
Bradford, S. J., Hudson.	Ludwig, John C., Milwaukee.
Brown, Neal, Wausau.	Mallory R. B., Milwaukee.
Cary, Alfred L., Milwaukee.	Mott, Wesley, Oshkosh.
Caswell, L. B., Ft. Atkinson.	Norcross, Pliny, Janesville.
Clark, Homer C., Neillsville.	Noyes, George H., Milwaukee.
Clark, O. E., Appleton.	Pierce, H., Appleton.
Cowles, Herbert V., Madison.	Rix, Paul A., Milwaukee.
Cunningham, John, Janesville.	Ross, Frank A., Superior.
Daley, Frank A., Madison.	Sale, John W., Janesville.
Davidson, James H., Oshkosh.	Seaman, W. H., Sheboygan.
Donnelly, Joseph G., Milwaukee.	Shaw, Samuel, Crandon.
Ellis, Fred C., Milwaukee.	Smith, Charles C., Superior.
Estabrook, E. C., Milwaukee.	Sickelsteel, Irving, Stevens Point.
Fehlandt, John C., Madison.	Silverthorn, W. C., Wausau.
Gillen, Simon, Sheboygan.	Spooner, John C., New York.
Gilson, N. S., Fond du Lac.	Stenjem, Nissen P., Madison.
Goodland, John, Appleton.	Tenny, D. K., Madison.
Hamilton, Charles H., Milwaukee.	Thompson, Albert E., Oshkosh.
Harris, Addison C., (Hon.,) Indian-	Timlin, W. H., Milwaukee.
apolis.	Turner, William J., Milwaukee.
Hayes, Hiram, Superior.	Veeder, C. A., Mauston (Waupaca).
Helms, E. W., Hudson.	Webb, C. M., Grand Rapids.
Howe, W. E., Boseobel.	Williams, George L., Grand Rapids.
Hurley, M. A., Wausau.	



## LIST OF MEMBERS OF WISCONSIN STATE BAR ASSOCIATION.

- Aarons, Chas. L., Milwaukee.  
 Aberg, William J. P., Madison.  
 Adams, Henry W., Beloit.  
 Agnew, Andrew D., Milwaukee.  
 Agnew, D. W., Oconomowoc.  
 Albrecht, A. J., Kenosha.  
 Anderson, Orlaf, Wausau.  
 Andrews, R. E., Marshfield.  
 Angelo, B. Wyatt, Stevens Point.  
 Arnquist, O. W., Hudson.  
 Arps, Helmuth F., Chilton.  
 Ashley, Lynn H., Hudson.  
 Atwell, W. E., Stevens Point.  
 Austin, Wm. H., Milwaukee.  
 Avery, L. A., Janesville.  
 Backus, Aug. C., Milwaukee.  
 Bacon, King M., Madison.  
 Baensch, Emil, Manitowoc.  
 Bagley, W. R., Madison.  
 Baker, J. F., Madison.  
 Baker, Norman L., Milwaukee.  
 Baker, Robert V., Kenosha.  
 Baldwin, C. L., La Crosse.  
 Baldwin, George B., Appleton.  
 Ballhorn, George E., Milwaukee.  
 Bancroft, L. H., Richland Center.  
 Barnes, Chester D., Kenosha.  
 Barnes, John, Madison.  
 Barnett, Morris, Kenosha.  
 Barry, Arthur R., Milwaukee.  
 Barry, Michael, Phillips.  
 Bartelt, Arthur H., Milwaukee.  
 Bartlett, Wm. P., Eau Claire.  
 Becker, John M., Monroe.  
 Beglinger, F., Oshkosh.  
 Behrens, Erich W., Milwaukee.  
 Belden, Ellsworth Burnett, Racine.  
 Belitz, Arthur F., Madison.  
 Bendinger, Henry J., Milwaukee.  
 Benfey, Theo., Sheboygan.  
 Bennett, J. Henry, Viroqua.  
 Bennett, W. H., Milwaukee.  
 Benson, Guy A., Racine.  
 Bentley, F. R., Baraboo.  
 Benton, Homer H., Appleton.  
 Bird, C. B., Wausau.  
 Black, W. E., Milwaukee.  
 Blaine, John J., Boscobel.  
 Blake, Chauncey E., Madison.  
 Blake, James B., Milwaukee.  
 Bloodgood, Wheeler P., Milwaukee.  
 Blum, Samuel, Monroe.  
 Bodenstab, H. H., Milwaukee.  
 Boesel, Frank Tilden, Milwaukee.  
 Bohmrich, Louis, Milwaukee.  
 Bosshard, Otto, La Crosse.  
 Bossuener, Otto A., Sheboygan.  
 Bottensek, John, Appleton.  
 Bottum, E. H., Milwaukee.  
 Bouck, W. C., Oshkosh.  
 Bowler, Timothy M., Sheboygan.  
 Brabant, E. J., Madison.  
 F. S. Bradford, Appleton.  
 Brady, Bernard V., Milwaukee.  
 Brady, Bernard E., Manitowoc.  
 Braun, August E., Milwaukee.  
 Brazeau, T. W., Grand Rapids.  
 Briesen, Ernest Von, Milwaukee.  
 Brossard, E. E., Columbus.  
 Brown, Charles N., Madison.  
 Brown, Neal, Wausau.  
 Browne, E. E., Waupaca.  
 Bruce, Andrew A., (Hon.), Bismarck, N. Dak.  
 Buchanan, D., Jr., Chippewa Falls.  
 Buchanan, J. R., Waukesha.  
 Buckmaster, A. E., Kenosha.  
 Buehler, Theo., Alma.  
 Buell, C. E., Madison.  
 Bugbee, Albert, Shell Lake.  
 Bump, F. E., Wausau.  
 Bundy, Charles T., Eau Claire.  
 Bunge, Geo. W., La Crosse.  
 Bunsä, George E., Columbus.  
 Burdge, Richard J., Beloit.  
 Burke, Frank P., Milwaukee.  
 Burke, M. E., Beaver Dam.  
 Burke, Walter M., Kenosha.  
 Burke, Wm. E., Milwaukee.  
 Burkhardt, John W., Milwaukee.  
 Burnell, Geo. W., Oshkosh.  
 Burns, Harvey M., Milwaukee.  
 Burpee, F. C., Janesville.  
 Burroughs, W. S., La Crosse.  
 Bushnell, Alfred H., Madison.  
 Butler, H. L., Madison.  
 Butler, Henry S., Superior.  
 Butler, John A., Milwaukee.  
 Butler, LeRoy D., Madison.  
 Butler, Thomas, Milwaukee.  
 Cady, B. A., Birnamwood.  
 Cady, Samuel H., Green Bay.  
 Calkins, Frank W., Grand Rapids.  
 Cannon, C. G., Appleton.  
 Cannon, Raymond J., Milwaukee.  
 Carhys, J. O., Milwaukee.

- Carey, George, Beloit.  
 Carow, J. W., Ladysmith.  
 Carpenter, Paul D., Milwaukee.  
 Carter, Chas. S., Milwaukee.  
 Carter, George W., Ripon.  
 Carter, Richard, Dodgeville.  
 Carthew, H. E., Lancaster.  
 Cary, Paul V., Appleton.  
 Cashin, Chas. H., Stevens Point.  
 Cavanaugh, James, Kenosha.  
 Cavanaugh, Richard P., Kenosha.  
 Cerminara, Angelo, Milwaukee.  
 Chase, J. B., Oconto.  
 Christiansen, C. A., Juneau.  
 Christopher, F. J., Superior.  
 Churchill, Thos. T., Milwaukee.  
 Churchill, W. H., Milwaukee.  
 Clancy, James M., Stoughton.  
 Clark, R. L., Oshkosh.  
 Clark, Royal F., Randolph.  
 Clarkson, Joseph R., Kenosha.  
 Classon, Allan V., Oconto.  
 Classon, D. G., Oconto.  
 Clementson, Geo. B., Lancaster.  
 Clifford, Eugene A., Juneau.  
 Cochems, Henry F., Milwaukee.  
 Coe, Clarence C., Barron.  
 Coe, Lawrence S., Rice Lake.  
 Cole, Llewellyn, Clintonville.  
 Colingnon, F. J., Green Bay.  
 Comstock, Harry S., Cumberland.  
 Conlan, Lawrence N., Milwaukee.  
 Connell, Samuel A., Milwaukee.  
 Conway, D. D., Grand Rapids.  
 Conway, W. J., Grand Rapids.  
 Cook, J. J., Waukesha.  
 Corrigan, W. D., Milwaukee.  
 Crawford, William P., Superior.  
 Crownhart, Chas. H., Madison.  
 Cudahy, John, Milwaukee.  
 Cunningham, J. J., Janesville.  
 Cummings, Henry, Milwaukee.  
 Curtis, George, Jr., Merrill.  
 Dahlman, Louis A., Milwaukee.  
 Davies, J. E., Madison.  
 Davis, Morton E., Green Bay.  
 Dempsey, Edward J., Oshkosh.  
 Devos, Alfred L., Neillsville.  
 Devos, John J., Milwaukee.  
 Dillon, M. E., Ashland.  
 Dithmar, Julius T., Elroy.  
 Doe, Joseph B., Milwaukee.  
 Doerfler, Christian, Milwaukee.  
 Donnelly, Emmet A., Milwaukee.  
 Dougherty, James F., Kilbourn.  
 Dougherty, W. H., Janesville.  
 Doyle, T. L., Fond du Lac.  
 Drew, A. F., La Farge.  
 Drew, Walter, Milwaukee.  
 Drought, Jas. T., Milwaukee.  
 Drury, Alfred L., Kenosha.  
 Dunwiddie, J. D., Monroe.  
 Dunwiddie, Stanley G., Janesville.  
 Durant, Paul D., Milwaukee.  
 Dyer, J. R., Milwaukee.  
 Earle, Jesse, Janesville.  
 Earll, John S., Prairie du Chien.  
 Eastman, E. C., Marinette.  
 Eckart, George E., Madison.  
 Edgar, Charles T., Wausau.  
 Edgar, R. A., Beloit.  
 Ekern, H. L., Madison.  
 Ela, Emerson, Madison.  
 Ellis, L. Olson, Black River Falls.  
 Enslow, Charles A., Janesville.  
 Esch, John J., La Crosse.  
 Eschweiler, F. C., Milwaukee.  
 Ettenheim, George P., Milwaukee.  
 Evans, Evan A., Baraboo.  
 Evans, W. L., Green Bay.  
 Fairchild, A. W., Milwaukee.  
 Fairchild, E. T., Milwaukee.  
 Fairchild, H. O., Green Bay.  
 Fawcett, Charles F., Milwaukee.  
 Fawcett, Frank L., Milwaukee.  
 Ferry, Robert P., Milwaukee.  
 Fifield, Charles L., Janesville.  
 Finch, E. P., Oshkosh.  
 Fisher, John J., Bayfield.  
 Fisher, Peter, Kenosha.  
 Fisher, Peter, Jr., Kenosha.  
 Fisher, W. E., Stevens Point.  
 Fitzgibbon, Henry, Menasha.  
 Flanders, James G., Milwaukee.  
 Flanders, Roger Y., Milwaukee.  
 Flynn, Wallace J., Pewaukee, (Milwaukee).  
 Foley, Jerome J., Racine.  
 Foley, William A., Milwaukee.  
 Foley, William R., Superior.  
 Ford, John P., Wausau.  
 Foster, Fred A., Fond du Lac.  
 Foster, Warren B., La Crosse.  
 Foulkes, Wm. J., Oshkosh.  
 Fowler, C. A., Portage.  
 Fox, Leo P., Chilton.  
 Frame, H. J., Waukesha.  
 Frank, Julius P., Appleton.  
 Freeman, Robert R., Milwaukee.  
 Frenz, J. W., Baraboo.  
 Fridley, Charles R., Superior.  
 Friend, Charles, Milwaukee.  
 Frink, H. Lee, Marinette.  
 Fritz, Oscar M., Milwaukee.

- Frost, E. W., Milwaukee.  
 Fugina, Martin L., Fountain City.  
 Fuller, William N., Cumberland.  
 Gallagher, Joseph T., Stevens Point.  
 Gard, H. V., Superior.  
 Garvin, John, Ashland.  
 Gauerke, John W., Green Bay.  
 Gehrz, Gustav G., Milwaukee.  
 Geiger, F. A., Milwaukee.  
 Geilfuss, C. F., Milwaukee.  
 Gemmill, A. J., Baraboo.  
 Gennrich, F. W., Wausau.  
 Gill, A. D., Mauston.  
 Gill, T. H., Milwaukee.  
 Gillen, M. J., Racine.  
 Gilman, Charles H., Friendship.  
 Gilman, W. W., Madison.  
 Gilmore, E. A., Madison.  
 Gittings, C. C., Racine.  
 Glasier, Gilson G., Madison.  
 Glicksman, Nathan, Milwaukee.  
 Goggins, B. R., Grand Rapids.  
 Gold, W. L., Milwaukee.  
 Goldman, Harry R., Marinette.  
 Goodrick, E. J., Antigo.  
 Gordon, George H., La Crosse.  
 Gordon, Robert D., La Crosse.  
 Gordon, S. G., La Crosse.  
 Goss, Arthur H., Oshkosh.  
 Graass, Henry, Sturgeon Bay.  
 Grace, H. H., Superior.  
 Grady, Daniel H., Portage.  
 Grant, Francis C., Janesville.  
 Graves, C. W., Viroqua.  
 Graves, W. R., Prairie du Chien.  
 Greene, George G., Green Bay.  
 Grimm, George, Jefferson.  
 Griswold, M. S., Waukesha.  
 Gross, Edwin J., Milwaukee.  
 Grubb, Paul N., Edgerton.  
 Gruenewald, A. H., Oshkosh.  
 Gunderson, Louis C., Madison.  
 Hall, Chas. H., Portage.  
 Halsey, L. W., Milwaukee.  
 Hambrecht, Geo. P., Grand Rapids.  
 Hammel, Leopold, Milwaukee.  
 Hammond, Walter W., Kenosha.  
 Hammer, E. J., Hillsboro.  
 Hand, Elbert B., Racine.  
 Hanitch, Louis, West Superior.  
 Hannan, T. J., Milwaukee.  
 Hanson, Frank H., Mauston.  
 Hardgrove, John G., Milwaukee.  
 Harper, J. C., Madison.  
 Harper, Jno. F., Milwaukee.  
 Harrington, John, Oshkosh.  
 Hart, J. C., Waupaca.  
 Hartley, Clarence J., Superior.  
 Hartwell, Fred H., La Crosse.  
 Harvey, Richard G., Racine.  
 Hastings, Henry J., Kenosha.  
 Hastings, S. D., Green Bay.  
 Haugen, Nils P., Madison.  
 Haven, Spencer, Hudson.  
 Hayden, T. F., Milwaukee.  
 Hayes, W. A., Milwaukee.  
 Healy, John C., Beaver Dam.  
 Heck, Maximillian W., Racine.  
 Hemlock, D. J., Waukesha.  
 Hickox, Chas. T., Milwaukee.  
 Hicks, Emmet R., Oshkosh.  
 Higbee, Edward C., La Crosse.  
 Higgins, Edward F., Kenosha.  
 Hill, Carl N., Madison.  
 Hilton, George, Oshkosh.  
 Hogan, T. W., Antigo.  
 Hollister, R. A., Oshkosh.  
 Holmes, Arthur T., La Crosse.  
 Hooper, Edward M., Oshkosh.  
 Hooper, Frank A., Crandon.  
 Hooper, J. F., Crandon.  
 Hooper, Moses, Oshkosh.  
 Hoppmann, A. C., Madison.  
 Houghton, F. W., Milwaukee.  
 Hoyt, F. M., Milwaukee.  
 Hudnall, Geo. B., Milwaukee.  
 Hull, Lathrop W., Oshkosh.  
 Hull, Merlin, Black River Falls.  
 Hume, George C., Chilton.  
 Huntington, Sol P., Green Bay.  
 Hurlbut, Wilbur E., Omro.  
 Husting, B. A., Fond du Lac.  
 Husting, Gustav B., Mavville.  
 Jackman, R. W., Madison.  
 Jackson, Carl D., Oshkosh.  
 Jackson, Russell, Milwaukee.  
 Janeeck, Adolph R., Racine.  
 Jedney, Eli S., Black River Falls.  
 Jeffris, M. G., Janesville.  
 Jerdee, Mons P., St. Croix Falls.  
 Jenkins, James G., Milwaukee.  
 Johns, Joshua L., Algoma.  
 Johnson, Buchanan, Plainfield.  
 Jones, B. W., Madison.  
 Jones, G. D., Wausau.  
 Kane, Henry V., Milwaukee.  
 Kaney, John S., Milwaukee.  
 Kanneberg, Adolph, Milwaukee.  
 Karel, John C., Milwaukee.  
 Karrow, Herman H., Milwaukee.  
 Kaumheimer, Wm., Milwaukee.  
 Kearney, Thomas M., Racine.  
 Kearney, Thomas W., Jr., Racine.

- Kelley, J. L., Wausau.  
 Kellogg, A. F., Portage.  
 Kellogg, Walter B., Superior.  
 Kelly, J. A., Oconomowoc.  
 Kelm, William A., Portage.  
 Kemp, Harry E. G., Boscobel.  
 Kemper, J. B., Milwaukee.  
 Kennan, K. K., Milwaukee.  
 Kerschensteiner, Mark J., Fort Atkinson.  
 Kerwin, J. C., Madison.  
 Kileen, E. F., Wautoma.  
 Killilea, H. J., Milwaukee.  
 Kimball, Wm. C., Oshkosh.  
 Kirkland, R. B., Jefferson.  
 Kirwan, Michael, Manitowoc.  
 Kittell, J. A., Green Bay.  
 Klatte, William A., Whitefish Bay.  
 Kleist, John C., Milwaukee.  
 Kay, Alfred L., Milwaukee.  
 Kluwin, John F., Oshkosh.  
 Knoblock, William J., Racine.  
 Koefler, C. A., Jr., Milwaukee.  
 Konop, Thomas F., Kewaunee.  
 Kopp, A. W., Platteville.  
 Kreutzer, A. L., Wausau.  
 Krez, Paul T., Sheboygan.  
 Kroesing, Oscar, Milwaukee.  
 Kroneke, Geo., Madison.  
 Krugmeier, A. H., Appleton.  
 Kusta, Frank J., Milwaukee.  
 La Boule, John F., Milwaukee.  
 Ladd, Edward M., Edgerton.  
 Laffin, H. N., Milwaukee.  
 LaFollette, Robert M., Washington, D. C.  
 Lake, Earl G., Madison.  
 Lamoreaux, Frank B., Ashland.  
 Lamoreaux, Clarence A., Ashland.  
 Larson, Albert S., Shawano.  
 Lecher, Louis A., Milwaukee.  
 Lees, Andrew, La Crosse.  
 Leicht, George J., Wausau.  
 Leitsch, W. C., Columbus.  
 Liegler, John H., Racine.  
 Lindemann, G. O., Osseo.  
 Lines, George, Milwaukee.  
 Lord, Irving P., Waupaca.  
 Loverud, E. K., Stoughton.  
 Lucas, Frank W., Madison.  
 Luehsinger, John, Monroe.  
 Ludwig, Emil J., Milwaukee.  
 Lueck, Martin L., Juneau.  
 Turvey, Lawson E., Fond du Lac.  
 Luse, Claude Z., Superior.  
 Lynn, Carl, Osceola.  
 Lyon, J. F., Elkhorn.  
 Lyons, T. E., Madison.  
 Mack, Edwin S., Milwaukee.  
 Maher, J. J., Milwaukee.  
 Mahoney, D. O., Viroqua.  
 Mahoney, P. W., La Crosse.  
 Marchetti, Louis, Wausau.  
 Markham, Geo. C., Milwaukee.  
 Markham, Robert H., Manitowoc.  
 Markham, Stuart H., Milwaukee.  
 Marks, Cyril E., Madison.  
 Marshall, R. D., Madison.  
 Martin, John F., Green Bay.  
 Martin, Joseph, Green Bay.  
 Martin, P. H., Green Bay.  
 Mason, Vroman, Madison.  
 Matheson, A. E., Janesville.  
 Maxfield, Harry L., Janesville.  
 McCausland, E. F., Superior.  
 McCloud, George H., Ashland.  
 McDonnell, J. E., La Crosse.  
 McElroy, W. J., Milwaukee.  
 McGalloway, John P., Fond du Lac.  
 McGill, L. E., Ladysmith.  
 McGovern, Francis E., Milwaukee.  
 McGowan, Emmett D., Janesville.  
 McGowan, James, Algoma.  
 McGrath, William H., Monroe.  
 McIntyre, Eugene L., Milwaukee.  
 McKenna, Maurice, Fond du Lac.  
 McLeod, Arthur A., Madison.  
 McMahan, Omar T., Milwaukee.  
 McMahon, Stephen J., Milwaukee.  
 McMillan, John W., Milwaukee.  
 McMullen, J. E., Chilton.  
 McMynn, R. N., Milwaukee.  
 McNamara, D. W., Montello.  
 McNamara, Frank L., Milwaukee.  
 Mead, L. H., Shell Lake.  
 Mead, M. C., Plymouth.  
 Merrill, Carlton, Green Bay.  
 Merrill, Fred D., Green Bay.  
 Merton, Ernst, Waukesha.  
 Mesiroff, Lenore R., Milwaukee.  
 Messerschmidt, J. E., Madison.  
 Metzler, John A., Montello.  
 Meyer, Frank C., Lancaster.  
 Meyers, Peter J., Racine.  
 Michelson, Albert C., Madison.  
 Miller, Benjamin K., Milwaukee.  
 Miller, George P., Milwaukee.  
 Millmann, Charles F., Milwaukee.  
 Minahan, E. D., Rhinelander.  
 Minahan, E. R., Green Bay.  
 Minahan, V. I., Green Bay.  
 Mittelstead, G. A., Kenosha.  
 Mock, Edward A., Milwaukee.  
 Moeller, August C., Milwaukee.

- Monroe, C. E., Milwaukee.  
 Morgan, John H., Appleton.  
 Morgan, William J., Milwaukee.  
 Morris, Charles F., Washburn.  
 Morris, Chas. M., Milwaukee.  
 Morris, W. A. P., Madison.  
 Morrissey, Edward, Delavan.  
 Morsell, A. L., Milwaukee.  
 Morton, George E., Milwaukee.  
 Mott, Mayhew, Neenah.  
 Mouat, Malcolm O., Janesville.  
 Murphy, Peter J., Madison.  
 Naber, E. H., Mayville.  
 Naffz, Carl F., Merrill.  
 Nash, A. L., Manitowoc.  
 Nash, E. G., Manitowoc.  
 Nash, L. J., Manitowoc.  
 Neelen, Neele B., Milwaukee.  
 Nelson, George B., Stevens Point.  
 Nelson, R. N., Madison.  
 Nemmers, Erwin P., Milwaukee.  
 Neville, Arthur C., Green Bay.  
 Newbury, Charles W., Waukesha.  
 Niven, John M., Milwaukee.  
 Nolan, Thomas S., Janesville.  
 North, Jerome R., Green Bay.  
 O'Connor, Geo. E., Eagle River.  
 O'Connor, J. L., Milwaukee.  
 Oestreich, O. A., Janesville.  
 O'Keefe, John J., Portage.  
 O'Kelliher, V. J., Oconto.  
 Okoneski, John J., Wausau.  
 Olin, John M., Madison.  
 Olbrich, M. B., Madison.  
 Olwell, Lawrence A., Milwaukee.  
 O'Meara, Patrick, West Bend.  
 O'Neill, James, Neillsville.  
 Orth, Chas. A., Milwaukee.  
 Orth, Franklin F., Milwaukee.  
 Orton, P. A., Darlington.  
 Osborn, C. F., Darlington.  
 Otjen, Henry H., Milwaukee.  
 Owen, W. C., Maiden Rock.  
 Page, William H., Madison.  
 Palmer, W. C., Racine.  
 Park, B. B., Stevens Point.  
 Parker, B. L., Green Bay.  
 Parker, Fred S., Superior.  
 Parkinson, W. K., Phillips.  
 Parmentier, J. M., Green Bay.  
 Patterson, E. J., Milwaukee.  
 Pedrick, S. M., Ripon.  
 Pereles, Nathan, Jr., Milwaukee.  
 Perrin, Solon L., Superior.  
 Perry, George M., Black River Falls.  
 Perry, Harry M., Black River Falls.  
 Perry, Raymond J., Milwaukee.  
 Pfiffner, J. B., Stevens Point.  
 Phalan, D. T., Sheboygan.  
 Pierce, Charles E., Janesville.  
 Pierreece, Victor T., Ashland.  
 Pinkerton, D. C., Oshkosh.  
 Pors, Emil C., Marshfield.  
 Porter, M. C., Merrill.  
 Poss Benjamin, Milwaukee.  
 Pradt, L. A., Wausau.  
 Prescott, A. C., Sheboygan.  
 Price, Clinton G., Mauston.  
 Priestley, T. M., Mineral Point.  
 Proctor, Harlan P., Viroqua.  
 Puchner, R. E., Wausau.  
 Quarles, Jos. V., Jr., Milwaukee.  
 Quarles, Louis, Milwaukee.  
 Quarles, William C., Milwaukee.  
 Quinlan, Mrs. Belle, Benton.  
 Quinlan, W. B., Marinette.  
 Radcliffe, Jonas, Mosinee.  
 Rahr, Emil G., Milwaukee.  
 Randall, Clifford E., Kenosha.  
 Reed, Frank D., Madison.  
 Reid, A. H., Wausau.  
 Reilly, M. K., Fond du Lac.  
 Reinholdt, Richard T., Tomahawk.  
 Reitman, Leo, Milwaukee.  
 Reynolds, Edward J., Madison.  
 Rhynner, O. B., Oshkosh.  
 Richards, H. S., Madison.  
 Richardson, E. L., Milwaukee.  
 Richardson, M. P., Janesville.  
 Richmond, B. M., Evansville.  
 Richmond, T. C., Madison.  
 Richter, A. W., Milwaukee.  
 Riddell, William R., (Hon.,)  
 Toronto, Can.  
 Riley, Charles G., Madison.  
 Riordan, D. E., Milwaukee.  
 Riordan, John F., Haywood.  
 Risjord, G. N., Ashland.  
 Roberts, D. E., Superior.  
 Robinson, G. E., Oconomowoc.  
 Roebr, Julius E., Milwaukee.  
 Rogers, Alfred T., Madison.  
 Rogers, Charles B., Jefferson.  
 Rogers, Harlan B., Portage.  
 Rogers, J. H., Portage.  
 Rohr, Louis H., Burlington.  
 Rooney, H. J., Plymouth.  
 Rosenberry, M. B., Madison.  
 Rubin, W. B., Milwaukee.  
 Rundell, Oliver S., Madison.  
 Runke, Richard B., Merrill.  
 Rush, Walter J., Neillsville.  
 Russell, Charles C., Milwaukee.  
 Ryan, Thomas H., Wausau.

- Ryan, Thomas Henry, Appleton.  
 Sanborn, A. L., Madison.  
 Sanborn, A. W., Ashland.  
 Sanborn, J. B., Madison.  
 Sanderson, T. H., Milwaukee.  
 Sauve, Ernest, Iron River.  
 Sawyer, E. W., Hartford.  
 Sawyer, H. A., Hartford.  
 Schauen, Wm. F., Pt. Washington.  
 Schein, Samuel Bernard, Madison.  
 Schinz, Walter, Milwaukee.  
 Schlabach, Otto M., La Crosse.  
 Schmitz, Adolph J., Milwaukee.  
 Schoetz, Max, Jr., Milwaukee.  
 Schubert, A. H., La Crosse.  
 Schubring, E. J. B., Madison.  
 Schultz, Edward E., Juneau.  
 Schweizer, C. H., La Crosse.  
 Scott, Burr J., Milwaukee.  
 Sells, Max, Florence.  
 Severson, H. J., Iola.  
 Shea, W. F., Ashland.  
 Sheldon, G. M., Tomahawk.  
 Sheridan, M. S., Milwaukee.  
 Sheridan, Phillip, Green Bay.  
 Shockley, Dale C., Milwaukee.  
 Shoemaker, Arthur H., Eau Claire.  
 Siebceker, R. G., Madison.  
 Silverwood, T. P., Green Bay.  
 Simmons, John B., Racine.  
 Slater, John C., Kenosha.  
 Sletteland, Perry A., La Crosse.  
 Smalley, S. E., Cuba City.  
 Smart, Edwin M., Milwaukee.  
 Smieding, William, Jr., Racine.  
 Smith, A. H., Merrill.  
 Smith, Brayton E., Wausau.  
 Smith, Benjamin S., Ashland.  
 Smith, Charles Foster, Rhineland.  
 Smith, Herbert J., De Pere.  
 Smith, Howard L., Madison.  
 Smith, Lloyd D., Waupaca.  
 Smith, Rufus B., Madison.  
 Smith, R. E., Merrill.  
 Smith, Samuel M., Janesville.  
 Spencer, Edward W., Milwaukee.  
 Spohn, William H., Madison.  
 Spooner, W. M., Milwaukee.  
 Stearns, Perry, J., Milwaukee.  
 Stebbins, B. H., Madison.  
 Steele, W. M., Superior.  
 Stevens, E. Ray, Madison.  
 Stewart, Calvin, Kenosha.  
 Stewart, F. C., Oshkosh.  
 Stone, James A., Reedsburg.  
 Stone, Patrick T., Wausau.  
 Stover, John S., Milwaukee.  
 Strehlow, Max H., Green Bay.  
 Stroud, R. M., Madison.  
 Strouse, Alexander L., Milwaukee.  
 Sturdevant, L. M., Eau Claire.  
 Sutherland, George G., Janesville.  
 Swan, Geo. B., Beaver Dam.  
 Swanson, S. T., Milwaukee.  
 Sweet, William W., Wausau.  
 Swett, H. E., Fond du Lac.  
 Tallman, Stanley D., Janesville.  
 Taylor, Charles A., Barron.  
 Teall, Frederick A., Milwaukee.  
 Tenney, Charles H., Madison.  
 Thekan, Charles A., Milwaukee.  
 Thiers, Edward C., Kenosha.  
 Thomas, Herbert H., Baraboo.  
 Thompson, George, Ellsworth.  
 Thompson, Fulton, Racine.  
 Thompson, James, La Crosse.  
 Thompson, J. C., Oshkosh.  
 Thompson, William D., Racine.  
 Thorn, Gerritt T., Oshkosh.  
 Tibbs, Wm. L., Milwaukee.  
 Timlin, William H., Jr., Milwaukee.  
 Tipton, R. I., Superior.  
 Tracy, John E., New York.  
 Trost, Hugo J., Milwaukee.  
 Trotman, James F., Milwaukee.  
 Trump, Roger M., Milwaukee.  
 Tully, James E., Kenosha.  
 Umbreit, August C., Milwaukee.  
 Upham, H. A. J., Milwaukee.  
 Van Alstine, C. H., Milwaukee.  
 Van Dyke, Douglas, Milwaukee.  
 Van Dyke, George D., Milwaukee.  
 Van Dyke, W. D., Milwaukee.  
 Van Hecke, John, Merrill.  
 Veech, E. R., Sheboygan.  
 Vinje, Aad J., Madison.  
 Wagener, W. E., Sturgeon Bay.  
 Walker, Mort. E., Racine.  
 Wallrich, M. J., Shawano.  
 Walsh, John, Washburn.  
 Wangerin, Arnold, Milwaukee.  
 Wanvig, Orlando M., Colfax.  
 Watkins, R. A., Lancaster.  
 Weed, H. I., Oshkosh.  
 Weidner, Adolph J., Milwaukee.  
 Weissert, A. G., Milwaukee.  
 Wengert, Eugene, Milwaukee.  
 Werner, E. V., Shawano.  
 Wescott, W. A., Crandon.  
 West, George A., Milwaukee.  
 Westphal, F. C., Milwaukee.  
 Whelan, C. E., Madison.  
 Whelan, W. E., Grand Rapids.  
 Wheeler, F. F., Waupaca.

Wheeler, L. C., Milwaukee.	Williams, O. T., Milwaukee.
Wheeler, Lyman G., Milwaukee.	Williams, S. M., Milwaukee.
Whitehead, J. M., Janesville.	Wilson, Henry C., Superior.
Wickham, James, Eau Claire.	Winkler, F. C., Milwaukee.
Wiegand, Charles H., Eagle River.	Winslow, John B., Madison.
Wigman, J. H. M., Green Bay.	Winter, Frank, La Crosse.
Wilcox, F. M., Appleton.	Winter, P. J., Shawano.
Wilcox, R. P., Eau Claire.	Wood, Edgar L., Milwaukee.
Wild, Robert, Milwaukee.	Wood, John J., Berlin.
Wildish, J. E., Milwaukee.	Woodward, W. H., Watertown.
Wiley, Alexander, Chippewa Falls.	Wylie, Frederick M., Madison.
Williams, Chas. H., Oshkosh.	Wynne, Frank B., Madison.
Williams, Clifton, Milwaukee.	Yockey, Chauncey, Milwaukee.
Williams, George E., Oshkosh.	Zabel, Winfred C., Milwaukee.
Williams, Katherine, Milwaukee.	Zimmerman, A. G., Madison.
Williams, Leo A., Fond du Lac.	Zimmers, W. J., Milwaukee.

## CONSTITUTION.

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### NAME.

Section 1. The Association shall be called "The State Bar Association of Wisconsin."

### OBJECT.

Section 2. The object of the Association is to maintain the honor and dignity, and to increase the usefulness and influence of the profession of the law.

### MEMBERSHIP.

Section 3. The members of the legal profession residing in this state whose names have heretofore been published as members of the State Bar Association and who have not resigned such membership, together with those who have been elected members of the Association subsequent to the publication of Vol. 9 of the Reports of this Association, and other members of the legal profession residing in this state who shall hereafter make application in conformity with the constitution and by-laws for membership in the Association and shall be elected as members thereof, are hereby declared to be active members of this Association subject to other provisions of the constitution and by-laws affecting such membership. By-laws regulating the admission of members may be adopted.

\*Section 4. All members of the Association who have paid dues for twenty-five years or more shall be active members of the Association, but shall not be subject to the payment of annual dues or assessments. The Executive Committee of the Association may from time to time recommend for election by the Association, as honorary members, any member or non-member of the Association, such recommendation to be based upon some special service or distinction of such proposed honorary member, and such person when elected shall become an honorary member of the Association and shall be

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\*Amended 1918.



exempt from the payment of all dues and assessments. All members of the Association who have heretofore been elected as honorary members by reason of having paid dues for a period of fifteen years from and after the passage of this amendment shall be considered active members exempt from further payment of dues and assessments. Any member of the Association may for special reasons, on notice of a member of the Association, be relieved by the Association from the further payment of dues and assessments. All active members relieved by this section or the Association from the payment of dues and assessments, and all honorary members, may participate in all the deliberations of the Association except as to financial questions. Members of the Association who now are or hereafter shall be engaged in the active service of the United States in the present war shall be exempt from the payment of Association dues and assessments while such service continues. All provisions of the constitution in conflict herewith are hereby repealed.

#### REPRESENTATION BY PROXY.

Section 5. Any member in good standing, who is unable to attend any meeting of this Association, may be represented therein by proxy duly appointed in writing, such proxy being a member of this Association, and a resident of the judicial circuit of the member appointing him.

Section 6. The officers of the Association shall be a President, a Vice-President, from each judicial circuit in the state, a Secretary, a Treasurer, and an Executive Committee, consisting of the President, Secretary and Treasurer, and the Chairman of each standing committee. All of said officers, except the Executive Committee, shall be elected for one year and until their successors are elected. At the meeting of the Association at which this provision shall be adopted there shall be elected two members of the Executive Committee for one year, two for two years, and two for three years, and thereafter two members of such committee shall be elected annually for three years. The standing committee of which each member of the Executive Committee shall be chairman shall be designated at the time of his election. Vacancies occurring in the office of Secretary, Treasurer or Executive Committee, shall be filled by appointment by the Executive

Committee until the next ensuing annual meeting. The President shall be the Chairman of the Executive Committee and the Secretary shall be the Secretary of such committee.

The offices of Secretary and Treasurer may be held by the same person.

#### DUTIES OF EXECUTIVE COMMITTEE.

Section 7. The Executive Committee shall conduct the affairs of the Association subject to the constitution, by-laws and rules of the Association, and shall carry out all resolutions or directions of the Association. They shall have power to make by-laws for the government of the Association, its officers and committees in all matters; but such by-laws may be amended, altered or repealed by the Association at any meeting thereof. The Association may also adopt by-laws, and no by-law, alteration or repeal of a by-law made by the Association shall be altered, changed, modified or restored by the committee.

#### DUTIES OF SECRETARY.

Section 8. The Secretary shall keep a record of the proceedings of all meetings of the Association, and of its Executive Committee, in a book kept for that purpose. He shall preserve all correspondence, and all communications addressed to the Association or to its committee, relating to its affairs, and lay the same before the committee at any meeting thereof. He shall notify officers and members of their election, and conduct the correspondence of the Association under the direction of the Executive Committee, and perform such other duties as may be prescribed by the constitution or bylaws, or as the Association or Executive Committee may direct.

The Clerk of the Supreme Court shall be *ex-officio* an Assistant Secretary of this Association. He shall safely keep and preserve such documents, records, books and other papers as the Executive Committee may direct in such place or with such depository as in each instance said Committee may designate.

#### DUTIES OF TREASURER.

Section 9. The Treasurer shall receive, collect, safely keep and under the direction of the Executive Committee disburse all funds of the Association. He shall report annually,

or oftener if required by the committee; shall keep regular accounts of all sums received and disbursed, and shall notify all members in arrears. His account shall at all times be open for inspection of the Executive Committee, and shall be examined at each meeting of the Association by a special committee to be appointed for that purpose. He shall at the expiration of his term of office, pay over and deliver to his successor in office, or such person as the Executive Committee shall appoint to receive the same, all moneys, books and property in his possession as such officer on demand. He shall perform such other duties as may be prescribed by the constitution or by-laws, or as the Association or Executive Committee may direct.

#### MEETINGS OF THE ASSOCIATION.

Section 10. The annual meeting of the Association shall be held each year at a time to be fixed by the Association or by the Executive Committee, and special meetings of the Association may be called by the Executive Committee at any time. The Secretary shall give thirty (30) days' notice of all meetings, whether of annual or special, except as may be provided by rule or by-law hereafter adopted. The usual parliamentary rules shall govern the meetings of the Association.

#### ELECTIONS.

Section 11. Elections shall be by ballot. In elections of officers a majority of the votes cast shall elect; in elections of members three-fourths of the votes cast shall be necessary to elect.

#### PROCEEDINGS, WHEN PUBLIC.

Section 12. Proceedings against members or other lawyers, upon complaint, shall be with closed doors. Other deliberations of the meeting shall be open to the public. In proceedings upon complaints no votes shall be allowed by proxy.

#### ANNUAL DUES.

\*Section 13. The annual dues are hereby fixed at Two Dollars per year and shall be payable on or before the 1st day of June of each year. Any member subject to such dues who fails to pay the same prior to the 1st day of January follow-

\*Amended 1916—pp. 69-70.

ing shall stand suspended and his rights as a member cease, except that he shall stand reinstated upon payment of all dues for which he is delinquent. A Second Notice or demand for the payment of dues, referring to the provisions of this section, shall be sent to all members not responding to the first demand.

#### STANDING COMMITTEES.

Section 14. There shall be appointed by the President, in the manner herein provided, the following standing committees, which shall consist of six members each and a member of the Executive Committee, who shall be chairman thereof.

1. A Judicial Committee, which shall be charged with the duty of hearing and examining all complaints against members of the Association, and also all complaints which may be made in matters affecting the interests of the legal profession, the practice of the law, and the administration of justice, and to report the same to the Association with such recommendations or suggestions as they deem proper.

2. A Committee on the Amendment of the Law, which shall be charged with the duty of considering proposed changes of the law, and of recommending such as they deem entitled to the favorable influence of the Association, and of conferring with the legislature of the state, or any committee thereof, in respect thereto, when directed by the Association.

3. A Committee on Membership, to which shall be referred for recommendation and report, all applications for membership in the Association.

4. A Committee on Legal Education, on which shall devolve the duty of examining and reporting upon our system of legal education and of admission to the bar, and recommending such changes as they deem advisable.

5. A Committee on Necrology and Biography, who shall report to each annual meeting the decease of any members of the Association who shall have died during the preceding year, and the deceased of distinguished members of the legal profession in this state who may not be members of this Association, with such obituary notices as such committee may deem best.

6. A Committee on Publication, who shall, under the direction of the Executive Committee, prepare for publication

and cause to be printed the proceedings of the meetings of the Association, with the addresses and papers presented at such meetings, or such part thereof as such committee may deem best.

7. At the meeting of the Association at which this provision shall be adopted, there shall be appointed two members of each of such committees for one year, two members of each of such committees for two years, and two members of each of such committees for three years. Thereafter two members of each of such committees shall be appointed annually for three years.

8. Special committees may be appointed by the Association from time to time. Each committee may adopt rules for its government or procedure, subject to the constitution and by-laws. Each of said committees shall make a report at the annual meetings of the Association, and to the Executive Committee whenever required by that committee.

#### PROCEEDINGS AGAINST MEMBERS OF THE LEGAL PROFESSION.

Section 15. Whenever complaint shall be made against a member of this Association, by any member or members thereof for any misconduct in his relations thereto, or by any person or against any member of the legal profession admitted to or practicing at the bar in this state, whether a member of this Association or not, for any misconduct in his profession, such complaint may be presented to the Judicial Committee. The Complaint must be in writing subscribed by the member or person making the same, plainly stating the matter complained of, with particulars of time, place and circumstance. The committee shall examine the same, under such regulations as they may adopt, and report their conclusions, together with the evidence in the case, to the Association for such action as the case may require. If the Association shall determine that any lawyer, whether a member of this Association or not, should be presented to the supreme or any circuit court in this state to be dealt with for any misconduct in the profession, the Association shall appoint a committee to prosecute such case in behalf of the Association.

## SUSPENSION, EXPULSION, ETC.

Section 16. Any member may be suspended or expelled for misconduct in his relations to the Association, or in his profession, after conviction thereof, by such methods of procedure as may be prescribed by the laws; and all interest in the property of the Association of persons ceasing to be members by expulsion, resignation or otherwise, shall thereupon vest in the Association.

## WHEN TO TAKE EFFECT—AMENDMENTS.

Section 17. This constitution shall go into effect immediately. It can be amended only by a two-thirds vote of the members present in person or by proxy at an annual meeting of the Association.

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BY-LAWS.

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Article 1. Any member of the profession practicing in this state, desiring to join the Association, will forward his application in writing to the Secretary, stating therein his full name and residence, when and where he was admitted to the bar, and where he has since been engaged in the practice of law.

Article 2. The Secretary will note upon each application for admission the date of its reception and present all applications received by him to the Committee on Membership at its first meeting.

Article 3. The Committee on Membership will, on the first day of the convening of the Association at an annual or other meeting, act upon all applications for admission presented to them, and report to the Association, at its first business session of such meeting with its recommendation upon each application.

## MEETING OF THE ASSOCIATION.

Article 4. The order of exercises at the annual meeting shall, unless otherwise directed by the Executive Committee or the Association be as follows:

1. Opening address of the President and such other exercises as the Executive Committee shall prescribe.
2. Report of Committee on Membership and election of members.
3. Reports of Secretary and Treasurer.
4. Report of Executive Committee.
5. Reports of Standing Committees; Judicial Committee, On Amendment of the Law, On Legal Education.
6. Reports of special committees.
7. Nomination of officers.
8. Miscellaneous business.
9. The election of officers.

Article 5. No person shall speak more than ten minutes at a time, nor more than twice on the same subject unless by permission of the Association.

Article 6. All reports made, papers or essays read or addresses delivered before the Association, shall be lodged with the Secretary. The annual address of the President, such addresses as may be delivered on invitation of the Executive Committee, and a minute of all proceedings at the annual meeting shall be printed; and such other papers or addresses as the Executive Committee shall direct.

## MEETING OF STANDING COMMITTEES.

Article 7. All standing committees shall meet on the first day of each annual meeting, at the place where the same is to be held, at such hours as their respective chairmen shall appoint.

Article 8. Special meetings of any committees shall be held at such times and places as the chairman thereof may appoint; reasonable notice to be given by him to each member by mail.

Article 9. The Executive Committee shall hold a meeting at such time and place as shall be fixed by the chairman thereof at least sixty days prior to the annual meeting of the Association for the purpose of making such arrangements as they may deem advisable for such annual meeting. They shall immediately after such meeting report to the Secretary the arrangements made by them, if any, and the Secretary shall give notice thereof to each member of the Association by mail at least thirty days prior to such annual meeting.



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